

**TITLE 25 INDIANA DEPARTMENT OF
ADMINISTRATION**

**Proposed Rule
LSA Document #02-150**

DIGEST

Adds 25 IAC 5 concerning minority and women's business enterprises. Repeals 25 IAC 2-19 and 25 IAC 2-20. Effective 30 days after filing with the secretary of state.

25 IAC 2-19
25 IAC 2-20
25 IAC 5

SECTION 1. 25 IAC 5 IS ADDED TO READ AS FOLLOWS:

**ARTICLE 5. MINORITY AND WOMEN'S BUSINESS
ENTERPRISES**

Rule 1. Scope of Activities

**25 IAC 5-1-1 Duties of minority and women's business
enterprises division**

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13-16.5-1; IC 4-13-16.5-2; IC 4-13.6; IC 5-22

Sec. 1. The duties of the minority and women's business enterprises division, hereinafter referred to as the "division", shall be as defined in IC 4-13-16.5-2(f). (*Indiana Department of Administration; 25 IAC 5-1-1*)

**25 IAC 5-1-2 Duties of the deputy commissioner, minority
and women's business enterprises**

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13-16.5-3; IC 4-13.5-1; IC 4-13.6; IC 4-13-16.5-3; IC 5-22

Sec. 2. The duties of the deputy commissioner of the division shall be as defined in IC 4-13-16.5-3. (*Indiana Department of Administration; 25 IAC 5-1-2*)

25 IAC 5-1-3 Policy statement

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 3. (a) It is the policy of the state to provide an equal opportunity for existing and operating minority and women's business enterprises to receive and participate in the state's procurement process. The department will act on behalf of the state to actively promote, monitor, and enforce its MBE/WBE program.

(b) The commissioner of the department, through the minority and women's business enterprises section of the department and in concert with the governor's commission on minority and women's business enterprises, shall be the final authority on all matters pertaining to the maintenance

and administration of the MBE/WBE program and compliance thereto. (*Indiana Department of Administration; 25 IAC 5-1-3*)

Rule 2. Definitions

25 IAC 5-2-1 Definitions

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 1. (a) The following definitions apply throughout this article:

- (1) "Application for MBE/WBE program waiver" or "application" means the document supplied by prime contractors to the state (usually required at the time of most bid submittals), which requests the contractor's exemption from the contract goal and indicates the reasons why the contractor requires the exemption.
- (2) "Broker" means a business entity serving as an intermediary who negotiates contracts of purchase and sale, without assuming any risk of loss.
- (3) "Commission" means the governor's commission on minority and women's business enterprises.
- (4) "Commissioner" means the deputy commissioner for minority and women's business enterprises of the department.
- (5) "Contract" means any contract awarded by a state agency for construction projects or the procurement of goods or services, including professional services.
- (6) "Contract goal" means a targeted amount of participation as measured by the desired percentage of involvement by minority and women's business enterprises.
- (7) "Contractor" means a person or business entity who contracts with a state agency to provide goods or services.
- (8) "Department" means the Indiana department of administration.
- (9) "MBE/WBE program waiver" or "waiver" means the document supplied by the state to the prime contractor that approves the application for MBE program waiver.
- (10) "MBE/WBE subcontractor plan" or "plan" means the document supplied by prime contractors to the state (usually required at the time of most bid submittals), which indicates the means whereby the minority business participation will be attained.
- (11) "Minority business enterprise" or "MBE" means an individual, partnership, corporation, limited liability company, or joint venture of any kind that is owned and controlled by one (1) or more persons who are:
 - (A) United States citizens; and
 - (B) members of a minority group.
- (12) "Minority group" means the following:
 - (A) Blacks.
 - (B) American Indians.
 - (C) Hispanics.
 - (D) Asian Americans.
 - (E) Other similar minority groups as defined by 13 CFR 124.103.

(13) “Offeror” means any business entity that makes an offer to enter into a binding contract for the provision of materials or services to a state agency.

(14) “Owned and controlled” means having:

- (A) ownership of at least fifty-one percent (51%) of the enterprise, including corporate stock of a corporation;
- (B) control over the management and active in the day-to-day operations of the business; and
- (C) an interest in the capital, assets, and profits and losses of the business proportionate to the percentage of ownership.

(15) “Program” means the minority and women’s business enterprises program as administered by the department.

(16) “Qualifying member” means an individual who is socially disadvantaged.

(17) “Socially disadvantaged” or “disadvantaged” means an individual who has been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. The social disadvantage must stem from circumstances beyond their control. Being born in a country does not, by itself, suffice to make the birth country an individual’s country of origin for purposes of being included within a designated group.

(18) “State agency” means any of the following:

- (A) An authority, board, branch, commission, committee, department, division, or other instrumentality of the executive, including the administrative department of state government.
- (B) An entity established by the general assembly as a body corporate and politic.
- (C) A state educational institution.

The term does not include the state lottery commission or the Indiana gaming commission with respect to setting and enforcing goals for awarding contracts to minority and women’s business enterprises.

(19) “Subcontractor” or “second tier contractor” means any person entering into a contract with a prime vendor to directly furnish services or supplies toward the contract.

(20) “Supplier” or “distributor” means any business entity supplying materials, but no significant on-site labor is contributed in furtherance of the contract or to a vendor.

(21) “Vendor” means any person or business entity that has entered into a binding contract for the provision of materials or services to a state agency.

(22) “Women’s business enterprise” or “WBE” means an individual, partnership, corporation, limited liability company, or joint venture of any kind that is owned and controlled by one (1) or more persons who are:

- (A) United States citizens; and
- (B) whose gender is female.

(b) A reference to a federal statute or regulation is a reference to the statute or regulation as in effect January 1, 2001.

(c) The department may develop policies and procedures for certain industries to further define certification status as needs arise.

(d) Notwithstanding this section, with reference to business certification status as a broker or supplier, historic purchasing practices, standards for the industry, and other criteria such as risk of loss may be considered. (*Indiana Department of Administration; 25 IAC 5-2-1*)

Rule 3. Certification Standards

25 IAC 5-3-1 Certification policy

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 1. The department will act on behalf of the state to actively promote, monitor, and enforce the standards for certification of minority and women’s business enterprises defined in this article. (*Indiana Department of Administration; 25 IAC 5-3-1*)

25 IAC 5-3-2 Burden of proof allocations in the process

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 2. (a) In determining whether to certify a firm as eligible to participate as an MBE or WBE, the department must apply the standards of this section.

(b) The firm seeking certification has the burden of demonstrating, by a preponderance of the evidence, that it meets the requirements of this section concerning group membership, business size, ownership, and control.

(c) The applicant is the qualifying member whose participation is relied upon to meet the ownership requirements.

(d) The department must make determinations concerning whether the applicant has met the burden of demonstrating group membership, business size, ownership, and control by considering all the facts in the record, viewed as a whole. (*Indiana Department of Administration; 25 IAC 5-3-2*)

25 IAC 5-3-3 Group membership determinations

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 3. (a) In determining whether the socially disadvantaged participants in a firm own the firm, the department must consider all the facts in the record, viewed as a whole.

(b) The following are requirements to demonstrate socially disadvantaged:

(1) The department must rebuttably presume that citizens of the United States who are women or minority, as defined in this article, are socially disadvantaged individuals. The department may require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially disadvantaged.

(2) If the department has reason to question whether an individual is a member of a group that is presumed to be socially disadvantaged, it must require the individual to demonstrate, by a preponderance of the evidence, that he or she is a member of the group.

(3) If the department has reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially disadvantaged, it may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. The department's proceeding must follow the procedures of 25 IAC 5-4.

(4) In such a proceeding, the department has the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially disadvantaged. The department may require the individual to produce information relevant to the determination of his or her disadvantage.

(5) In making such a determination, the department must consider whether the person has held himself or herself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. The department may require the applicant to produce appropriate documentation of group membership as follows:

(A) If the department determines that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social disadvantage on an individual basis.

(B) The department's decisions concerning membership in a designated group are subject to the certification appeals procedure of 25 IAC 5-4.

(6) When an individual's presumption of social disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of MBE or WBE eligibility under this section unless and until he or she makes an individual showing of social disadvantage.

(Indiana Department of Administration; 25 IAC 5-3-3)

25 IAC 5-3-4 Business size determinations

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 4 (a) In determining whether the socially disadvantaged participants in a firm own the firm, the department must consider all the facts in the record, viewed as a whole.

(b) To be an eligible MBE or WBE, a firm (including its affiliates) must be an existing and operating small business, as defined by United States Small Business Administration (SBA) standards. The department must apply size standards found in 13 CFR 121, appropriate to the type of work the firm seeks to perform.

(c) Even if it meets the requirements of subsection (a), a firm is not an eligible MBE or WBE in any federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three (3) fiscal years, in excess of sixteen million six hundred thousand dollars (\$16,600,000). The commissioner may adjust this amount for inflation from time to time.

(d) A reference to a federal statute or regulation is a reference to the statute or regulation as in effect January 1, 2001. *(Indiana Department of Administration; 25 IAC 5-3-4)*

25 IAC 5-3-5 Ownership determinations

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 5. (a) In determining whether the socially disadvantaged participants in a firm own the firm, the department must consider all the facts in the record, viewed as a whole.

(b) To be an eligible MBE or WBE, a firm must be at least fifty-one percent (51%) owned by socially disadvantaged individuals. In the case of a:

(1) corporation, such individuals must own at least fifty-one percent (51%) of each class of voting stock outstanding and fifty-one percent (51%) of the aggregate of all stock outstanding;

(2) partnership, fifty-one percent (51%) of each class of partnership interest must be owned by socially disadvantaged individuals, and such ownership must be reflected in the firm's partnership agreement; and

(3) limited liability company, at least fifty-one percent (51%) of each class of member interest must be owned by socially disadvantaged individuals.

(c) The firm's ownership by socially disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.

(d) All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this subsection, no securities or assets held in trust, or by any guardian for a minor, are considered as

held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm if either of the following apply:

- (1) The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual.
- (2) The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policymaking, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

(e) The contributions of capital or expertise by the socially disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

(f) The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:

- (1) The owner's expertise must be as follows:
 - (A) In a specialized field.
 - (B) Of outstanding quality.
 - (C) In areas critical to the firm's operations.
 - (D) Indispensable to the firm's potential success.
 - (E) Specific to the type of work the firm performs.
 - (F) Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.
- (2) The individual whose expertise is relied upon must have a significant financial investment in the firm.

(g) The department must always deem as held by a socially disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual:

- (1) as the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
- (2) through inheritance, or otherwise because of the death of the former owner.

(h) The following are requirements to determine ownership:

(1) The department must presume as not being held by a socially disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any nondisadvantaged individual or non-MBE or WBE firm who is:

- (A) involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;
- (B) involved in the same or a similar line of business; or
- (C) engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

(2) To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate, by clear and convincing evidence, that:

- (A) the gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a MBE or WBE; and
- (B) the disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a nondisadvantaged individual who provided the gift or transfer.

(i) The department must apply the following rules in situations in which marital assets form a basis for ownership of a firm:

- (1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, the ownership interest in the firm must be deemed to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. The department may not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially disadvantaged owner of the applicant firm.
- (2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for MBE or WBE certification.
- (3) The department must take into consideration financial implications of the transfer/renouncement. For example, if the renouncement is for rights to a home, the applicant shall provide documentation of the transfer with mortgage holder.

(j) The department will consider the following factors in

determining the ownership of a firm, however, it must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because:

- (1) A socially disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in subsection (h).
- (2) There is a provision for the co-signature of a spouse who is not a socially disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents.
- (3) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially disadvantaged individual to a spouse who is such an individual. In this case, the department must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially disadvantaged individual.

(k) The following are requirements for joint venture:

- (1) A joint venture shall be eligible for the program when the MBE partner of the joint venture meets the standards in this section and the MBE shares in at least sixty percent (60%) of the ownership, control, management responsibilities, risks, and profits of the joint venture and when the MBE partner is responsible for a clearly defined portion of the work to be performed.
- (2) In a case where a change of ownership or the death of an owner has occurred within the MBE or the MBE joint venture, the department shall reserve the right to review the new ownership structure to determine whether or not continued program eligibility is warranted. Therefore, the MBE or MBE joint venture partner shall notify the department within thirty (30) days of all ownership changes. Failure to submit this notification may result in suspension of certification status.

(Indiana Department of Administration; 25 IAC 5-3-5)

25 IAC 5-3-6 Control determinations

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
 Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 6. (a) In determining whether socially disadvantaged owners control a firm, the department must consider all the facts in the record, viewed as a whole.

(b) Only an independent business may be certified as a MBE or WBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

- (1) In determining whether a potential MBE or WBE is an independent business, the department must scrutinize relationships with non-MBE or WBE firms, in such areas

as personnel, facilities, equipment, financial and/or bonding support, and other resources.

- (2) The department must consider whether present or recent employer/employee relationships between the disadvantaged owner of the potential MBE or WBE and non-MBE or WBE firms or persons associated with non-MBE or WBE firms compromise the independence of the potential MBE or WBE firm.
- (3) The department must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential MBE or WBE firm.
- (4) In considering factors related to the independence of a potential MBE or WBE firm, the department must consider the consistency of relationships between the potential MBE or WBE and non-MBE or WBE firms with normal industry practice.

(c) An MBE or WBE firm must not be subject to any formal or informal restrictions that limit the customary discretion of the socially disadvantaged owners. There can be no restrictions through corporate charter provisions, bylaw provisions, contracts, or any other formal or informal devices, for example, cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by nondisadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, or restrictions on or assignments of voting rights, that prevent the socially disadvantaged owners, without the cooperation or vote of any nondisadvantaged individual, from making any business decision of the firm. This subsection does not preclude a spousal co-signature on documents as provided for in this section.

(d) The socially disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long term decisions on matters of management, policy, and operations.

- (1) A disadvantaged owner must hold the highest officer position in the company, for example, chief executive officer or president.
- (2) In a corporation, disadvantaged owners must control the board of directors.
- (3) In a partnership, one (1) or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

(e) Individuals who are not socially disadvantaged may be involved in an MBE or WBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

(f) The socially disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially disadvantaged individuals. Such delegations of authority must be revocable, and the socially disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially disadvantaged owners in the firm's overall affairs must be such that the department can reasonably conclude that the socially disadvantaged owners actually exercise control over the firm's operations, management, and policy.

(g) The socially disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

(h) If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially disadvantaged persons who own and control a potential MBE or WBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, the department must not deny certification solely on the ground that the person lacks the license or credential. However, the department may take into account the absence of the license or credential as one (1) factor in determining whether the socially disadvantaged owners actually control the firm.

(i) The following are requirements for difference in remuneration:

(1) The department may consider differences in remuneration between the socially disadvantaged owners and other participants in the firm in determining whether to certify a firm as a MBE or WBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the

firm. The department may determine that a firm is controlled by its socially disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

(2) In a case where a nondisadvantaged individual formerly controlled the firm, and a socially disadvantaged individual now controls it, the department may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the nondisadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

(j) In order to be viewed as controlling a firm, a socially disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

(k) The following are requirements concerning control of a firm:

(1) A socially disadvantaged individual may control a firm even though one (1) or more of the individual's immediate family members (who themselves are not socially disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this subsection, the department must make a judgment about the control the socially disadvantaged owner exercises vis-a-vis other persons involved in the business as it does in other situations, without regard to whether or not the other persons are immediate family members.

(2) If the department cannot determine that the socially disadvantaged owners, as distinct from the family as a whole, control the firm, then the socially disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

(l) Where a firm was formerly owned and/or controlled by a nondisadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially disadvantaged individual, and the nondisadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm must demonstrate, by clear and convincing evidence, the following:

(1) The transfer of ownership and/or control to the

disadvantaged individual was made for reasons other than obtaining certification as an MBE or WBE.

(2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a nondisadvantaged individual who formerly owned and/or controlled the firm.

(m) In determining whether a firm is controlled by its socially disadvantaged owners, the department may consider whether the firm owns equipment necessary to perform its work. However, the department must not determine that a firm is not controlled by socially disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

(n) The department must grant certification to a firm only for specific types of work in which the socially disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm must have been certified for at least six (6) months in its current type of work, or certified by the department for at least one (1) year, and demonstrate that its socially disadvantaged owners are able to control the firm with respect to the newly-requested type of work. The department may not, in this situation, require that the firm be recertified or submit a new application for certification, but it must verify the qualifying owner's control of the firm in the additional type of work. However, the department must apply the same standards to additional types of work that were applied originally. These additional work areas are not guaranteed simply because the firm is currently certified. Further, there is a presumption against having more than three (3) industry variations in the same business entity.

(o) A business operating under a franchise or license agreement may be certified if it meets the standards in this part and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, the department should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

(p) In order for a partnership to be controlled by quali-

fied individuals, any nonqualifying partners must not have the power, without the specific written concurrence of the socially disadvantaged partner, to contractually bind the partnership or subject the partnership to contract or tort liability.

(q) The socially disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

(r) There is a presumption against the ability to operate and control more than three (3) business entities within the context of this article. (*Indiana Department of Administration; 25 IAC 5-3-6*)

25 IAC 5-3-7 Other rules affecting certification

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 7. (a) Consideration of whether a firm performs a commercially useful function may be a consideration used by the department in making decisions about whether to certify a firm as a MBE or WBE.

(b) The department may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the MBE or WBE program.

(c) The department must evaluate the eligibility of a firm on the basis of present circumstances. It must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part. Nor must it refuse to certify a firm solely on the basis that it is a newly formed firm. Standards regarding newly formed firms can be found in subsection (j).

(d) MBE OR WBE firms and firms seeking MBE OR WBE certification shall cooperate fully with the department's requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification pursuant to 25 IAC 5-4.

(e) Firms organized for-profit or not-for-profit may be eligible MBE or WBEs. Certification standards regarding not-for-profit organizations are found in section 10 of this rule.

(f) An eligible MBE or WBE firm must be owned by individuals who are socially disadvantaged. Except as provided in this subsection, a firm that is not owned by such individuals, but instead is owned by another firm, even an MBE or WBE firm, cannot be an eligible MBE or WBE.

(1) If socially disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization, or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, the department may certify the subsidiary if it otherwise meets all requirements of this subdivision. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

(2) The department may certify such a subsidiary only if there is cumulatively fifty-one percent (51%) ownership of the subsidiary by qualifying individuals. The following examples illustrate how this cumulative ownership provision works:

(A) Qualifying individuals own one hundred percent (100%) of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

(B) Qualifying individuals own one hundred percent (100%) of the holding company, which owns fifty-one percent (51%) of a subsidiary. The subsidiary may be certified, if all other requirements are met.

(C) Qualifying individuals own eighty percent (80%) of the holding company, which in turn owns seventy percent (70%) of a subsidiary. In this case, the cumulative ownership of the subsidiary by qualifying individuals is fifty-six percent (56%) (eighty percent (80%) of the seventy percent (70%)). This is more than fifty-one percent (51%), so the department may certify the subsidiary, if all other requirements are met.

(D) Same as examples in clause (B) or (C), but someone other than the qualifying owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by qualifying individuals, through the holding or parent company, the department cannot certify it because it fails to meet control requirements.

(E) Qualifying individuals own sixty percent (60%) of the holding company, which in turn owns fifty-one percent (51%) of a subsidiary. In this case, the cumulative ownership of the subsidiary by qualifying individuals is about thirty-one percent (31%). This is less than fifty-one percent (51%), so the department cannot certify the subsidiary.

(F) The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross

receipts cap of 13 CFR 121.402. Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

(g) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially disadvantaged individuals.

(h) The department must not require an MBE or WBE firm to be prequalified as a condition for certification. However, if the prequalification is industry/trade-specific, the department must require all firms that participate in its contracts and subcontracts related to that area to be prequalified.

(i) A firm that is owned by an Indian tribe, Alaska native corporation, or native Hawaiian organization as an entity, rather than by Indians, Alaska natives, or native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of 13 CFR 121.402. Such a firm must be controlled by socially disadvantaged individuals, as provided in this article.

(j) The applicant must possess reasonable prospects for success in competing in the public sector. To do so, it must be in business in its selected areas of certification for at least two (2) full years immediately prior to the date of its application unless a waiver for this requirement is granted pursuant to subsection (b).

(1) Income tax returns for each of the two (2) previous tax years must show operating revenues in the selected types of work for which the applicant is seeking certification.

(2) The department may waive the two (2) years in business requirement if each of the following conditions are met:

(A) The socially disadvantaged individual or individuals upon whom eligibility is based have substantial business management experience.

(B) The socially disadvantaged applicant has demonstrated technical experience to carry out its business venture.

(C) The applicant has a record of successful performance on contracts from governmental or nongovernmental sources in its primary area of certification.

(D) The applicant has, or can demonstrate its ability to timely obtain, the personnel, facilities, equipment, and any other requirements needed to perform contracts.

(k) An applicant has an affirmative obligation to disclose any and all material and relevant information affecting a firm's certification. Any misrepresentation or omission made with respect to an application may be grounds for denial of the application.

(l) An applicant can submit a maximum of two (2)

applications per year. At any time, only one (1) application can be pending. (*Indiana Department of Administration; 25 IAC 5-3-7*)

25 IAC 5-3-8 Rules affecting the certification process

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 8. (a) Certification process requirements are as follows:

(1) At a minimum, the Department must take the following steps in determining whether a firm meets the standards for certification as an MBE or WBE:

(A) The following for on-site visits:

(i) Make on-site visits to company headquarters with little or no advance notice in its efforts to make accurate judgments about the ownership and control of the subject MBE or WBE. The department must interview the principal officers of the firm and review their resumes and/or work histories. The department may also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in its jurisdiction or local area.

(ii) With regards to out-of-state firms, the department will rely upon the site visit report of other recognized governmental entities with respect to a firm applying for certification.

(B) If the firm is a corporation, analyze the ownership of stock in the firm.

(C) Analyze the bonding and financial capacity of the firm.

(D) Determine the work history of the firm, including contracts it has received and work it has completed.

(E) Obtain a statement from the firm of the type of work it prefers to perform as part of the MBE or WBE program and its preferred locations for performing the work, if any.

(F) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the program.

(G) Require potential firms to complete and submit an appropriate application form.

(2) The department must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.

(3) The department must review all information on the form prior to making a decision about the eligibility of the firm.

(4) The department must request, at any time that it

deems necessary, further information or clarification of any claims or issues that may lend reasonable doubt to the legitimacy of the subject MBE or WBE.

(5) The department must conduct preliminary audits of accounting records, project files, and any legal documents that may be pertinent or relevant to the establishment of legitimacy of the subject MBE or WBE.

(6) The department must make recommendations to the appropriate agencies and departments based on the findings of all reviews, interviews, site visits, and audits regarding the qualifications and legitimacy of the subject MBE or WBE.

(7) Make recommendations to the appropriate agencies for further investigation if misrepresentation is suspected.

(8) The department must make decisions on applications for certification within ninety (90) days of the determination that the applicant firm has submitted all information required under this part. The department may extend this time period once, for no more than an additional sixty (60) days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. Failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal under 25 IAC 5-4.

(9) Other certification information, as provided in the department's certification manual.

(b) Applications from MBE or WBE firms domiciled outside of Indiana require the following, in addition to the items in this article:

(1) The firm must be currently certified and in good standing with a governmental entity in its home state.

(2) The home state shall provide the on-site interview that was conducted in association with the certification. Certification of out-of-state applicants by the department is conditional to the out-of-state applicant meeting the standards of certification set forth in this article. The department reserves the right to grant or deny certification to an MBE or WBE with current, in-place certification status with other governmental agencies and departments with recognized certification authority.

(c) Confidentiality requirements are as follows:

(1) The department must safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable federal, state, and local law.

(2) If a vendor wishes to be certified by another certification entity, the vendor will be required to submit a written notice advising the office of the same. The office will then respond to requests for certification information from the previously identified agencies. The information that will be available will include application materials

and the report of a site visit, upon request. Transmission of financial data must be specifically requested. The department will respond to two (2) requests at no charge to the vendor. However, the department cannot bear the expense of additional copies, and will assess a fee of ten cents (\$0.10) per copy plus postage for the information being forwarded.

(d) Once the department has certified an MBE or WBE, the firm shall remain certified for a period of at least three years unless and/or until its certification has been removed through the procedures of 25 IAC 5-4. The department may not require firms to reapply for certification as a condition of continuing to participate in the program during this three (3) year period unless the factual basis on which the certification was made changes. (*Indiana Department of Administration; 25 IAC 5-3-8*)

25 IAC 5-3-9 Rules affecting the firm's responsibility after being certified

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 9. (a) Firm's responsibilities after certification include, but may not be limited to this section.

(b) A certified firm must inform the department in writing of any change in circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in the application form.

(1) Changes in contact information must be reported, including address, telephone number, and personnel.

(2) Management responsibility among members of a limited liability company are covered by this requirement.

(3) Supporting documentation must be attached describing in detail the nature of such changes.

(4) The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. Written notification must be provided within thirty (30) days of the occurrence of the change. Failure to make timely notification of such a change will be deemed to be failure to cooperate under section 7(d) of this rule.

(c) A certified firm must provide, every year on the anniversary of the date of its certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or

control requirements of this subsection or any material changes in the information provided in its application form, except for changes about which the firm has notified the department under subsection (b). The affidavit shall specifically affirm that the firm continues to meet Small Business Administration business size criteria and the overall gross receipts cap of this subsection, documenting this affirmation with supporting documentation of the firm's size and gross receipts. Failure to provide this affidavit in a timely manner will be deemed to have failed to cooperate under section 7(d) of this rule. (*Indiana Department of Administration; 25 IAC 5-3-9*)

25 IAC 5-3-10 Certification of not-for-profit organizations

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 10. Firms that are established as not-for-profit organizations may be certified as MBE and/or WBE firms. The standards for certification of the firm as the same as those set forth in this section, with the following exceptions:

(1) The applicant will be the highest ranking official working in the firm on a day-to-day basis.

(2) Business size will be waived.

(*Indiana Department of Administration; 25 IAC 5-3-10*)

Rule 4. Certification Denials and Challenges

25 IAC 5-4-1 General provisions

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 4-21.5-3-5; IC 5-22

Sec. 1. (a) This rule applies to the following situations:

(1) A firm whose application for certification as a minority or women's business enterprise has been denied.

(2) A complaint has been issued to a challenged enterprise concerning the possible revocation of its certification.

(3) A firm whose challenge to the certification of a minority or women's business enterprise has been denied.

(b) As used in this rule, "petitioner" means the person whose application for certification as a minority or women's business enterprise has been denied, or whose challenge to the certification of a minority or women's business enterprise has been denied.

(c) An action involving a denial of a certification or challenge to a certification under this rule shall also comply with IC 4-21.5-3.

(d) All proceedings under this section are deemed to be a determination of status as defined by IC 4-21.5-3-5.

(e) All certification determinations issued pursuant to proceeding under this section shall be deemed advisory or recommended orders.

(f) The ultimate authority under this article as defined by IC 4-21.5-3 is the commissioner of the department.

(g) Procedural matters regarding hearings under this section shall comply with section 5 of this rule.

(h) Notwithstanding any provision to the contrary contained in this article, the department reserves the right to deny certification to out-of-state firms if their home state does not afford certification for Indiana firms. (*Indiana Department of Administration; 25 IAC 5-4-1*)

25 IAC 5-4-2 Department's denials of initial requests for certification

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 4-21.5-3-7; IC 5-22

Sec. 2. (a) When the department denies a request by a firm, which is not currently certified, to be certified, the department must provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based must be made available to the applicant, on request.

(b) When a firm is denied certification, it cannot reapply for certification for twelve (12) months. The time period for reapplication begins to run on the later of the following events:

- (1) On the date the explanation required by subsection (a) is received by the firm.
- (2) Final order issued by the ultimate authority.

(c) A person who has been denied certification as a minority or women's business enterprise may request a hearing under IC 4-21.5-3-7.

(d) Requests for hearings must be submitted within fifteen (15) days after service of notice of denial of the certification or the challenge to a certification in accordance with IC 4-21.5-3.

(e) If a firm withdraws its application prior to notice of denial of certification, the firm may not reapply for six (6) months from the date the notice of withdrawal of application is received by the department. (*Indiana Department of Administration; 25 IAC 5-4-2*)

25 IAC 5-4-3 Department's removal of a firm's eligibility

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 3. (a) This section establishes standards for processing a complaint issued to a challenged enterprise concerning the possible revocation of its certification.

(b) Requirements for ineligibility complaints are as follows:

(1) Any person may file with the department a written complaint alleging that a currently certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. The department is not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified.

(2) The department must review its records concerning the firm, any material provided by the firm and the complainant, and other available information. The department may request additional information from the firm or conduct any other investigation that you deem necessary.

(3) If the department determines, based on this review, that there is reasonable cause to believe that the firm is ineligible, the department must provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination. If the department determines that such reasonable cause does not exist, it must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(c) If, based on notification by the firm of a change in its circumstances or other information that comes to the attention of the department that there is reasonable cause to believe that a currently certified firm is ineligible, the department must provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(d) Requirements for complaints from other state agencies are as follows:

(1) If a concerned state agency determines that information in your certification records, or other information available to that agency, provides reasonable cause to believe that a certified firm does not meet the eligibility criteria of this subsection, the concerned state agency may request that the department initiate a proceeding to remove the firm's certification.

(2) The concerned state agency must provide the department any relevant documentation or other information.

(e) When the department notifies a firm that there is reasonable cause to remove its eligibility, as provided in subsection (a), (b), or (c), the department must give the firm

an opportunity for a hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

(f) The firm may elect to present information and arguments, in writing, without going to a hearing. In such a situation, the department bears the burden of proving that the firm does not meet the certification standards by a preponderance of the evidence, as you would during a hearing.

(g) Hearing requirements are as follows:

(1) In such a proceeding, the department bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this rule.

(2) The department must maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. You must retain the original record of the hearing. You may charge the firm only for the cost of copying the record.

(h) For separation of functions, you must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.

(i) The department must not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the department at the time of its certification of the firm. It may base such a decision only on one (1) or more of the following:

(1) Changes in the firm's circumstances since the certification of the firm by the department that render the firm unable to meet the eligibility standards of this rule.

(2) Information or evidence not available to the department at the time the firm was certified.

(3) Information that was concealed or misrepresented by the firm in previous certification actions by a department.

(4) A change in the certification standards or requirements since the firm was certified.

(5) A documented finding that the department's determination to certify the firm was factually erroneous.

(j) Requirements for status of firms during proceedings are as follows:

(1) A firm remains an eligible MBE or WBE status during the pendency of the department's proceeding to remove its eligibility.

(2) The firm does not become ineligible until a notice

revoking certification is issued by the commissioner of the department.

(k) When you remove a firm's eligibility, you must take the following action:

(1) When a prime contractor has made a commitment to using the ineligible firm, or there has been made a commitment to use the firm as a prime contractor, but a subcontract or contract has not been executed before the decertification notice provided for in subsection (j) has been issued, the ineligible firm does not count toward the contract goal or overall goal. The prime contractor is to meet the contract goal with an eligible firm or demonstrate that it has made a good faith effort to do so.

(2) If a prime contractor has executed a subcontract with the firm before the department has notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its goal for the firm's work. In this case, or in a case where a prime contract has been awarded to a firm that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the notice of its ineligibility shall not count toward the overall goal, but may count toward the contract goal.

(3) If the firm's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, the department will count its participation on that contract toward overall and contract goals.

(Indiana Department of Administration; 25 IAC 5-4-3)

25 IAC 5-4-4 Procedures when a challenge is not accepted

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 4-21.5-3-7; IC 5-22

Sec. 4. (a) If you are a complainant in an ineligibility complaint to the department, you may appeal if the department does not find reasonable cause to propose removing a firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.

(b) A complainant may request a hearing under IC 4-21.5-3-7. Requests for hearings must be submitted within fifteen (15) days after service of notice of denial of the certification or the challenge to a certification in accordance with IC 4-21.5-3. *(Indiana Department of Administration; 25 IAC 5-4-4)*

25 IAC 5-4-5 Procedural issues

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 4-21.5-3; IC 5-22

Sec. 5. Procedural matters are not addressed in this title shall be governed by the Indiana rules of trial procedure. The following procedural matters shall comply with IC 4-21.5-3:

(1) Appearances and service.

(2) Discovery.

- (3) Subpoenas.
- (4) Prehearing.
- (5) Motions for summary judgment and other appropriate motions.
- (6) Depositions.
- (7) Continuances.
- (8) Evidence.
- (9) Matters concerning ex parte communication.
- (10) Matters concerning sanctions and penalties.
- (11) Transmittal of the record and recommendation to the ultimate authority shall comply with IC 4-21.5-3.
- (12) A petitioner must afford the department an opportunity to investigate and verify information or documents that the petitioner intends to offer in support of his or her case. The petitioner shall not be permitted to introduce into evidence any information or documents that the department has not been afforded the opportunity to investigate and verify.

(Indiana Department of Administration; 25 IAC 5-4-5)

25 IAC 5-4-6 Proceedings

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
 Affected: IC 4-21.5; IC 4-33

Sec. 6. (a) The burden of proof shall at all times be on the petitioner in either of the following situations:

- (1) The petitioner is appealing the denial of an application for certification under this rule.
- (2) The petitioner is appealing the denial of a challenge to a minority or women's business enterprise certification under this rule.

The petitioner shall have the affirmative responsibility of establishing by a preponderance of the evidence that the application for certification should not have been denied or that the challenge to a certification should not have been denied.

(b) The burden of proof shall at all times be on the department if the department has filed a complaint indicating the department seeks to revoke a challenged enterprise's certification. The department shall have the affirmative responsibility of establishing by a preponderance of the evidence that the challenged enterprise does not meet the requirements of the act and this title for certification as a minority or women's business enterprise.

(c) Any testimony shall be given under oath or affirmation. The administrative law judge shall be authorized to administer oaths.

(d) Both parties may present an opening statement on the merits. The party who bears the burden of proof proceeds first. The party not bearing the burden of proof may not reserve opening statement for a later time. The administrative law judge may determine the length of time each party is permitted for the presentation of an opening statement.

(e) The party bearing the burden of proof shall then present its case-in-chief.

(f) Upon the conclusion of the case-in-chief presented by the party bearing the burden of proof, the other party may move for a directed finding. The administrative law judge may hear arguments on the motion or may grant, deny, or reserve any decision thereon, with or without argument.

(g) If no motion for directed finding is made, or if such motion is denied or decision reserved thereon, the party not bearing the burden of proof may present its case.

(h) Each party may conduct cross-examination of adverse witnesses.

(i) Upon conclusion of the case of the party not bearing the burden of proof, the party bearing the burden of proof may present evidence in rebuttal.

(j) The administrative law judge may ask questions of the witnesses and may request or allow additional evidence at any time, including additional rebuttal evidence.

(k) Both parties may present closing argument. The party bearing the burden of proof proceeds first, and, thereafter, the opposing party. The party bearing the burden of proof may present rebuttal argument. The administrative law judge may determine the length of time each party is permitted for the presentation of closing argument.

(l) The administrative law judge may require or allow the parties to submit posthearing briefs, proposed findings of fact, and conclusions of law within ten (10) days of the conclusion of the hearing or within such other time period the administrative law judge might order.

(m) Notwithstanding any other provision in this article to the contrary, evidence presented at any hearing or review conducted under this article shall be confined to the information available to the department at the time its decision was issued. *(Indiana Department of Administration; 25 IAC 5-4-6)*

Rule 5. MBE/WBE Participation in Procurement and Contracting; Prime Contractors

25 IAC 5-5-1 Policy; procurement and contracting

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
 Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 1. It is the policy of the state to provide an equal opportunity for minority and women's business enterprises to participate in the state's procurement and contracting processes as prime contractors. *(Indiana Department of Administration; 25 IAC 5-5-1)*

25 IAC 5-5-2 Activities to achieve participation

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 2. The department shall perform activities to provide minority and women's business enterprises the opportunity to participate in the state's award of purchases and contracts. (*Indiana Department of Administration; 25 IAC 5-5-2*)

25 IAC 5-5-3 Outreach and assessment

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 3. (a) The department shall perform activities to outreach to minority and women's business enterprises. The department shall assess where and when the programs are most valuable to these enterprises.

(b) The department shall provide information on qualifications necessary for firms to compete for bid opportunities. (*Indiana Department of Administration; 25 IAC 5-5-3*)

25 IAC 5-5-4 Promoting MBE/WBE participation as prime contractors

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 4. The department shall provide and promote opportunities for minorities and women to participate in procurement and contracting opportunities as prime vendors. (*Indiana Department of Administration; 25 IAC 5-5-4*)

25 IAC 5-5-5 Monitoring MBE/WBE participation as prime contractors

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 5. (a) In monitoring MBE/WBE participation in prime contract awards, the department shall do the following as it pertains to nonadvertised procurements and contracting bids:

- (1) Establish a standard method to record solicitations of these procurements.
- (2) The form for such recording should include, but not be limited to, the following:
 - (A) Information on the contractors contacted, including name, address, telephone number, fax, and e-mail.
 - (B) The contractors' ethnicity and gender.
 - (C) Whether or not the contractor is a small business.
 - (D) Whether or not the contractor is new to the state's procurement process.
 - (E) The contractor's bid amount (or that the contractor chose not to bid).
 - (F) The person completing the form.
 - (G) The personnel responsible for the solicitation.

(b) To monitor MBE/WBE participation in prime contract awards, the department shall do the following as

it pertains to contracts other than nonadvertised procurements and contracting bids:

(1) Monitor the lists of firms bidding to develop potential strategies to increase the number of bidders. The form for such recording should include, but not be limited to, the following:

- (A) Information on the contractors, including name, address, telephone number, fax, and e-mail.
- (B) The contractors' ethnicity and gender.
- (C) The reason or reasons the company has chosen not to bid.

(2) Establish a system to debrief bidders who do not win state contracts. The method of debriefing may include one (1) or more of the following:

- (A) Provide feedback to MBE/WBE bidders and/or small firms, in general, to ensure they are aware of the availability of information regarding bid tabulations.
- (B) Work with small business assistance organizations to counsel MBE/WBE bidders and/or small firms, in general, on strengthening future proposals and/or understanding of state requirements.

(3) Maintain a list of bidders, consisting of information regarding all firms that bid or quote contracts. This list shall be used to compile and track those firms who have shown an interest in participating in the state's procurement and contracting processes. The information to be compiled shall include, but may not be limited to, the following:

- (A) Company name, address, phone number, fax, and e-mail.
- (B) Owner's name, gender, and ethnicity.
- (C) If new to the state bid process, age of firm and gross annual receipts.
- (D) For this bid, name of proposed subcontractors proposed, including, for each company, the company's name, owner's name, gender, and ethnicity.

(*Indiana Department of Administration; 25 IAC 5-5-5*)

25 IAC 5-5-6 Reporting MBE/WBE participation as prime contractors

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13-16.5-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 6. All state agencies, as defined in IC 4-13-16.5-1, shall report to the department its award of prime contracts to MBEs and WBEs on a quarterly basis. The form of the report shall be in compliance with policies and procedures of the department. (*Indiana Department of Administration; 25 IAC 5-5-6*)

Rule 6. MBE/WBE Participation in Procurement and Contracting; Subcontractors

25 IAC 5-6-1 Promoting MBE/WBE participation as subcontractors

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 1. The department shall provide and promote opportunities for minorities and women to participate in procurement and contracting opportunities as subcontractors. (*Indiana Department of Administration; 25 IAC 5-6-1*)

25 IAC 5-6-2 Monitoring MBE/WBE participation as subcontractors

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 2. (a) In monitoring MBE/WBE participation as subcontractors, the department shall conduct pre-project meetings with all subcontractors and prime contractors. The department shall determine which projects will require a pre-project meeting. Items of discussion at the meeting shall include, but may not be limited to, the following:

- (1) Subcontractors will learn when their services are likely to be needed.
- (2) The department will explain the state's prompt payment program.
- (3) The department will provide a review of MBE/WBE program requirements.
- (4) The department will explain the state's nondiscrimination and antidiscrimination laws.

(b) Require prime contractors to include an explanation for how MBEs and WBEs will be used with all amendments and/or change order requests, and the percentage represented above the current contract amount.

(c) Notify subcontractors when contracts are revised upward through amendments and/or change orders.

(d) All prime contractors, including MBE and WBE prime contractors, must meet the contract goals through use of subcontractors. MBE and WBE prime contractors will get no credit toward the contract goal for the use of their own workforce. (*Indiana Department of Administration; 25 IAC 5-6-2*)

25 IAC 5-6-3 Reporting MBE/WBE participation as subcontractors

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 3. In addition to requirements mentioned in other areas of the part, prime contractors shall be required to report all subcontractor participation, that is, MBE/WBE subcontractors and non-MBE/WBE subcontractors. The report shall include, but may not be limited to, the following:

- (1) Company name, address, telephone number, fax, and e-mail.
- (2) Owner's name, gender, and ethnicity.
- (3) Name of contact person employed by the firm.
- (4) Work the firm will perform and the approximate date when the subcontractors' work will commence (individually).

(5) Contract amount for services to be performed (individually).

(*Indiana Department of Administration; 25 IAC 5-6-3*)

25 IAC 5-6-4 Procedure for subcontractor bid submission

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 4. (a) In a case where the bidder has arranged to subcontract one hundred percent (100%) or more of the subcontractor goal to MBEs and WBEs, a completed MBE/WBE subcontractor plan shall be submitted, along with the other required bid documents, as prescribed.

(1) All MBE and WBE subcontractors must be validated by the department prior to the award of the contract. The completed plan shall include the following information:

- (A) Name of the firm to be employed.
- (B) Phone number of the firm.
- (C) Name of a contact person from the firm.
- (D) Work the firm will perform and the approximate date when the MBEs work will commence.
- (E) Contract amount for services that will be performed.

(2) In a case where the bidder has had the MBE/WBE subcontractor plan approved, where that bidder has been awarded the contract, and where the awarded contract is one hundred thousand dollars (\$100,000) or more, the bidder shall submit participation reports monthly, or at more frequent intervals, as may be requested.

(3) The department reserves the right to periodically require progress reports from the contractor on projects under one hundred thousand dollars (\$100,000) regarding continuing MBE and WBE participation.

(b) Purchases from MBE suppliers are allowed for MBE credit in the program. The maximum allowable credit will be limited to sixty percent (60%) of the total project goal. The supplier must perform a commercially useful function.

(c) In a case where the bidder has been unable to arrange to subcontract one hundred percent (100%) of the subcontract goal, but has been able to arrange to subcontract some of the goal to MBEs and/or WBEs, both a completed MBE/WBE subcontractor plan and a completed application for MBE/WBE program waiver shall be submitted with the other required bid documents, as prescribed. All MBE and WBE subcontractors must be validated by the department prior to the award of the contract. All forms are to be completed as described in subsection (a).

(d) In a case where the bidder has been unable to arrange to subcontract the goal percentage or in a case where no MBE or WBE participation is expected to occur, a completed application for MBE/WBE program waiver shall be submitted, along with the other required bid documents, as prescribed. The application shall be used to demonstrate

the bidder's efforts to employ MBEs and WBEs on the project. The application shall include the following information:

- (1) Names of the MBE and WBE firms that the bidder has contacted or been contacted by.
- (2) Persons working at the firms who were contacted.
- (3) Phone numbers of the firms.
- (4) Types of contacts or communications.
- (5) An explanation of the results obtained, such as price not competitive, unable to contact, or no response.

The state reserves the right to verify and seek further clarification of any information submitted.

(e) Compliance with this rule is considered to be a demonstration of the bidder's responsiveness and responsibility. Therefore, all statements shall be complete, legible, true, and correct and shall not omit material facts. Failure to provide complete and accurate MBE and WBE subcontractor plans using minority and women's business enterprises validated as MBEs and WBEs by the department, or failure to provide applications for MBE/WBE program waivers, or both, may be the basis for rejection of the bid. (*Indiana Department of Administration; 25 IAC 5-6-4*)

Rule 7. Compliance

25 IAC 5-7-1 Policy

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13-16.5-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 1. (a) The results of a study, a Statistical Analysis of Utilization, conducted in accordance with IC 4-13-16.5-1, will determine the availability of socially disadvantaged small, minority, and women's business enterprises in the marketplace.

(b) Should the study find statistically significant disparities in state contractual expenditures in specifically defined areas, as compared to the ready, willing, and able minority and women's business enterprises in the state, the department shall institute goals for procurement and contracting to remedy the disparate findings of the study. (*Indiana Department of Administration; 25 IAC 5-7-1*)

25 IAC 5-7-2 Parties to whom this rule applies

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13-16.5-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 2. (a) This rule applies to all state agencies as defined in IC 4-13-16.5-1.

- (b) This rule does not apply to either of the following:
- (1) The state lottery commission or the Indiana gaming commission with respect to setting and enforcing goals for awarding contracts to minority and women's business enterprises.
 - (2) Other state agencies whose purchases and contracts

were not addressed in the most current Statistical Analysis of Utilization.

However, these agencies shall provide reports to the department of MBE and WBE procurement and contracting. This information shall be incorporated as data for the next study. The agency shall not be exempt from that point forward. (*Indiana Department of Administration; 25 IAC 5-7-2*)

25 IAC 5-7-3 Goal setting

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13-16.5-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 3. (a) The goal setting shall be subject to the following provisions:

- (1) The goals shall be updated annually, during the month of March, to go into effect July 1 of the same year.
- (2) The goals shall reflect current utilization and availability.
- (3) The goals will apply to procurements and contracts as awarded, and to change orders, amendments, and other modifications to the contract which affect contract value.
- (4) In accordance with IC 4-13-16.5-1, the findings of discrimination shall be updated, and the continuance of the goals shall be subject to the results of that review.

(b) The department may set overall MBE and WBE goals, which may be met through the use of prime contractors, subcontractors, suppliers, joint ventures, or other arrangements that afford meaningful opportunities for MBE and WBE participation.

(c) The department may set specific MBE and WBE goals in the areas of construction, professional services, suppliers, and other business services based on the disparate findings of the Statistical Analysis of Utilization.

(d) Goals set by the department shall incorporate the availability of MBEs and WBEs to perform the work, and the availability of MBEs and WBEs in the location where the work is to be done.

(e) Subgoals may be set, wherein specific race and gender goals are set, incorporating the findings of the study, and in accordance with applicable laws.

(f) Goals may vary on individual contracts. However, the combined participation shall represent the MBE and WBE participation for the year. (*Indiana Department of Administration; 25 IAC 5-7-3*)

25 IAC 5-7-4 Compliance monitoring

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 4. (a) In the management of this program, the department shall exercise its rights to employ all available administrative actions and remedies to ensure that the goals

and intent of the program are successfully met. Therefore, the department shall serve as the final authority in the authentication, acceptance, and certification of MBE and WBE firms according to the criteria established in this article.

(b) The final authority in the review, acceptance, and approval of all MBE and WBE affidavits and subcontractor plans, and applications for MBE/WBE program waivers which are included in bid packages. In the performance of these duties, the department is hereby empowered to perform functions, including, but not limited to, the following:

- (1) Review all MBE and WBE affidavits and subcontractor plans, and applications for MBE/WBE program waivers, after the bid opening and before the award of the contract, in order to verify the authenticity of the documents and the successful bidder's adherence to the rules and regulations set forth in the contract documents.
- (2) Contact and interview the successful bidder or its listed subcontractors and material suppliers if further information is required to establish authenticity and to issue approval of the submitted documentation.
- (3) Conduct audits, as necessary, of the accounting records of the successful bidder and the MBE and WBE participants to determine and establish their authenticity for the final acceptance and approval of the documentation.
- (4) Issue an official NOTICE OF REJECTION when it has been determined that the successful bidder has not complied with the instructions set forth in the contract documents and this rule. The department may direct the successful bidder to submit revised documentation within five (5) working days or file for an official application for MBE/WBE program waiver. The department shall reserve the right to reject any and all bids when the successful bidder fails to respond to the department's request.
- (5) Issue an official NOTICE OF CONDITIONAL APPROVAL when the following has been determined:

- (A) That the successful bidder has demonstrated a good faith effort towards compliance to the program, but when one (1) or more of the MBE and/or WBE firms listed does not conform to the guidelines of this article.
- (B) When the levels of participation do not reach the goal of the project.

After a review of the situation and circumstances, the successful bidder may be directed to submit a revised MBE or WBE subcontractor plan or may be granted an official MBE/WBE program waiver, thereby, allowing an exception to the goal for the project or any portion thereof.

(6) Issue an official approval of the MBE or WBE subcontractor plan when it has been determined that the successful bidder has achieved compliance with the project goal.

(7) Issue an official MBE/WBE program waiver from all or part of the project goal when it has been determined that the successful bidder has employed a good faith effort towards compliance to the program and when it has been determined that the realization of the project goal will not be feasible because of circumstances which are beyond the control of the bidder.

(8) Make recommendations to the appropriate agencies for further investigation if misrepresentation is suspected.

(c) The final authority in the review and acceptance of the successful bidder's MBE and WBE program participation reports that must be submitted under section 6 of this rule. Therefore, the department reserves the right to do the following:

- (1) Receive copies, on a timely basis or upon demand, of all reports for the expressed purpose of their review, acceptance, or rejection. Timeliness of submittal, accuracy, and completeness will be subject to close scrutiny in the execution of this process.
- (2) Conduct interviews with the appropriate personnel or designated representatives from the firms, as necessary, to determine and establish authenticity for acceptance of the reports.
- (3) Conduct audits of the accounting records of the firms to determine accuracy in reporting and to establish authenticity for acceptance of the reports.
- (4) Direct the successful bidder and the MBE and WBE participants, or all, to provide, as necessary, additional documentation to establish authenticity for acceptance of the reports.
- (5) Make recommendations to the appropriate agencies for further investigation if misrepresentation is suspected.

(d) Because the attainment of the project goal has been established through contractual provisions with the prime contractor, the department shall consider the prime contractor to be the sole source of responsibility for goal attainment and project administration and shall, therefore, be held accountable for the actions of all of its subcontractors, including those subcontractors who have subcontracted work to MBE and WBE contractors or who have purchased materials from MBE and WBE suppliers.

(e) The department may employ its authority to make determinations of responsiveness and responsibility based on the actions of the subcontractors regarding adherence to Indiana laws and rules. (*Indiana Department of Administration; 25 IAC 5-7-4*)

25 IAC 5-7-5 Application for relief from project goal

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 5. (a) In cases where the contractor is unable to meet the project goal, the contractor may petition the depart-

ment for relief from that goal by filing an application for MBE/WBE program waiver. The application for MBE/WBE program waiver shall show all reasonable good faith efforts that were made by the contractor for the purpose of fulfilling the project goal. Such reasonable efforts shall include, but may not be limited to, the following:

(1) Documentation of direct contact or negotiations with MBEs and WBEs for specific contracting opportunities, the actions taken shall be reported in a manner that will include the following items:

(A) A detailed statement of the efforts made to negotiate with MBEs and WBEs, including the following:

(i) The names, addresses, and telephone numbers of MBEs and WBEs contacted.

(ii) A detailed statement of the reason why prospective agreements were not reached.

(B) A detailed statement of the efforts made to select portions of the work proposed to be performed by MBEs and WBEs in order to increase the likelihood of achieving the stated goal.

(2) Documentation of any advertising that the contractor performed in the search for prospective MBEs and WBEs for the contract.

(3) Documentation of any notifications that the contractor provided to minority business assistance agencies for the purpose of locating prospective MBEs and WBEs for the contract.

(4) Documentation of the contractor's efforts to research other possible areas of participation, including, but not limited to, any of the following:

(A) Suppliers.

(B) Shipping or transport firms.

(C) Engineering firms.

(D) Any other role that may contribute to the production and delivery of the product or service specified in the contract.

(5) Documentation regarding the contractor's affirmative action policies or programs as they pertain to the utilization of MBEs and WBEs. This documentation should also provide an explanation of the methods used to carry out the affirmative action policies.

(6) Documentation relevant to any other efforts the contractor has made to assist MBEs and WBEs in overcoming the traditional barriers of participation in the industry affected by the contract.

(b) When considering an application for MBE/WBE program waiver, the department will consider the following, including, but not limited to:

(1) The methods utilized by the contractor.

(2) The time the contractor has allowed for a meaningful response to its solicitations.

(3) Statements received from MBEs and WBEs who have been listed as having been contacted by the contractor.

(c) The contractor shall maintain adequate records of all relevant data with respect to the utilization and attempted utilization of MBEs and WBEs, and shall provide full access to these records to the department upon its request to inspect them. (*Indiana Department of Administration; 25 IAC 5-7-5*)

25 IAC 5-7-6 Grant of waiver from project goal

Authority: IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-16.5; IC 5-16-6.5; IC 22-9-1-10

Sec. 6. Upon review and analysis of the documentation supplied to the department by the contractor, a determination will be made and the contractor will be promptly notified of the results. Such results may include the following:

(1) Notification that the contractor has been granted a waiver from the project goal and has been authorized to proceed without any MBE or WBE participation on the contract.

(2) Notification that the contractor has been granted a partial waiver from the project goal and has been authorized to proceed when MBE and WBE participation is greater than zero (0), but less than the project goal.

(3) Notification that further information will be required before a final determination may be made.

(4) Notification that the application for MBE/WBE program waiver has not been granted. In such a case, the following action may result:

(A) The contractor may be required to provide further information.

(B) The contractor's bid may be rejected.

(*Indiana Department of Administration; 25 IAC 5-7-6*)

25 IAC 5-7-7 Appeals process for bid rejection or denial of waiver

Authority: IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-16.5; IC 5-16-6.5; IC 22-9-1-10

Sec. 7. (a) Upon notification that the application for MBE program waiver has been denied, the contractor may request a hearing with the MBE compliance review committee. The request for the hearing of an appeal shall be directed to:

MBE Compliance Review Committee
c/o Indiana Department of Administration
Indiana Government Center-South
402 West Washington Street
Indianapolis, Indiana 46204.

(b) In the appeals process, the committee shall be responsible for the following activities:

(1) Arrange a time and place to hear the contractor's appeal within five (5) working days of the date of the receipt of the contractor's request for the hearing.

(2) Provide the contractor with every opportunity to present the reason for the appeal.

(3) Review and discuss all of the information at hand, including the following:

(A) MBE availability.

(B) The contractor's original efforts towards MBE utilization.

(C) Statements from MBEs listed in the documentation supplied by the contractor.

(D) The arguments offered by the contractor at the hearing.

(4) Arrive at a final determination within five (5) working days after the conclusion of the appeal hearing.

(c) If the contractor is dissatisfied with the decision made by the MBE compliance review committee, the contractor may, within five (5) working days of receiving the committee's determination, request of the commissioner, in writing, a review and reconsideration of the decision and submit additional written material. The commissioner or designee will consider the request and issue a written decision within ten (10) working days after receipt of all material. (*Indiana Department of Administration; 25 IAC 5-7-7*)

25 IAC 5-7-8 Sanctions; contractors

Authority: IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-16.5; IC 5-16-6.5; IC 22-9-1-10; IC 35-43-5-9; IC 35-44-2-1

Sec. 8. (a) In the event of a violation of this rule, the department shall notify the contractor of the violations and will seek a course of action to correct them. The selected course of action may include the recommendation for the imposition of sanctions for material breach of contract if any of the following are determined:

(1) The contractor has not demonstrated a good faith effort to comply with this rule.

(2) The contractor has failed to cooperate in providing information regarding its good faith efforts to comply with this rule.

(3) The contractor provides false or misleading information concerning its minority business enterprise contracting activity or in relation to the contractor's good faith efforts to comply with this rule.

(4) The contractor fails to make prompt payment to a minority business for services, materials, or labor, whether with respect to the present contract or a previous contract between the contractor and the minority business, unless the contractor, in good faith, contests the payment or any part of it. The contractor fails to promptly pay the uncontested part to the minority business in the event the contractor, in good faith, contests part of a payment.

(5) The business enterprise provides false or misleading information concerning its status as a bona fide entity which is owned and actively controlled by racial minorities.

(6) The contractor subjects an MBE to unlawful discriminatory conduct.

(b) In the event that it is determined that a violation of this rule has occurred, the department may elect to immediately employ one (1) or more of the following sanctions:

(1) Withholding payments on the specific contract in which the deficiency is known to exist until such time that satisfactory corrective measures are made.

(2) Adjustment to payments due or the permanent withholding of retainages of the specific contract in which the deficiency is known to exist.

(3) Suspension or termination of the specific contract in which the deficiency is known to exist. In the event that this sanction is employed, the contractor will be held liable for any consequential damages arising from the suspension or termination of the contract, including damages caused as a result of the delay or from increased prices incurred in securing the performance of the balance of the work by other contractors.

(4) Recommendation to the certification board to revoke the contractor's certification status with the public works division of the department. This recommendation may result in the suspension or revocation of the contractor's ability to perform on future state contracts for a period no longer than thirty-six (36) months.

(5) Suspension, revocation, or denial of the MBE certification and eligibility to participate in the MBE program for a period of not more than thirty-six (36) months.

(c) In the event that sanctions are required, they may be employed immediately. Suspension or stay is in the sole discretion of the commissioner.

(d) In the event that the contractor has provided false or misleading information, the department may elect to provide the information to the appropriate investigating agencies for investigation and enforcement of any possible criminal violations or relevant statutes under IC 35-43-5-9 or IC 35-44-2-1.

(e) In the event that the contractor fails to pay the minority business in a timely manner or fails to satisfactorily resolve any outstanding claims, the department may elect to withhold the disputed amount from the payments due to the contractor and may elect to suspend or terminate the contract.

(f) In the event that the minority business enterprise has provided false or misleading information, the department may elect to provide the information to the appropriate investigating agencies for investigation and enforcement of any possible criminal violations of relevant statutes. (*Indiana Department of Administration; 25 IAC 5-7-8*)

25 IAC 5-7-9 Appeals process for violations ruling or sanctions imposed

Authority: IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-16.5; IC 5-16-6.5; IC 22-9-1-10

Proposed Rules

Sec. 9. (a) Upon notification of the determination of rules violations or sanctions imposed, the contractor may request a hearing before the MBE compliance review committee. The request for the hearing of an appeal shall be directed to:

MBE Compliance Review Committee
c/o Indiana Department of Administration
Indiana Government Center-South
402 West Washington Street
Indianapolis, Indiana 46204.

(b) In the appeals process, the committee shall be responsible for the following activities:

- (1)** Arrange a time and place to hear the contractor's appeal within five (5) working days of the date of the receipt of the contractor's request for the hearing.
- (2)** Provide the contractor with every opportunity to present the basis for the appeal.
- (3)** Review and discuss all of the information at hand and the arguments offered by the contractor at the hearing.
- (4)** Arrive at a final determination within five (5) working days after the conclusion of the hearing.

(c) If the contractor is dissatisfied with the decision made by the MBE compliance review committee, the contractor may, within five (5) working days of receiving the committee's determination, request of the commissioner, in writing, a review and reconsideration of the decision and submit additional written material. The commissioner or designee will consider the request and issue a written decision within ten (10) working days after receipt of all material. (*Indiana Department of Administration; 25 IAC 5-7-9*)

Rule 8. Commission Members

25 IAC 5-8-1 Ethics of commission members

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 1. Commission members shall abide by all applicable state statutes, administrative rules, policies, and guidelines regarding ethical conduct. (*Indiana Department of Administration; 25 IAC 5-8-1*)

SECTION 2. THE FOLLOWING ARE REPEALED: 25 IAC 2-19; 25 IAC 2-20.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 28, 2002 at 1:30 p.m., at the Indiana State Museum Auditorium, 650 West Washington Street, Indianapolis, Indiana the Indiana Department of Administration will hold a public hearing on proposed new rules regarding minority and women's business enterprises consistent with IC 4-13-16.5. Copies are available at the Web site for the Department of Administration at www.state.in.us/idoa.minority. Copies of these rules are now on

file at the Indiana Government Center-South, 402 West Washington Street, Room W474 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Glenn R. Lawrence
Commissioner
Indiana Department of Administration

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

NOTE: Under IC 6-1.1-31-1, the name of the State Board of Tax Commissioners is changed to Department of Local Government Finance, effective January 1, 2002.

Proposed Rule
LSA Document #01-402

DIGEST

Amends 50 IAC 2.3-1-1 and 50 IAC 2.3-1-2 to update the adoption date of matters incorporated by reference as a result of minor changes and corrections to the 2002 Real Property Assessment Manual and the Real Property Assessment Guidelines for 2002—Version A, published by the state board of tax commissioners and originally dated May 10, 2001, and to eliminate reference to the shelter allowance as required by House Enrolled Act 1001(ss). Effective 30 days after filing with the secretary of state.

50 IAC 2.3-1-1

50 IAC 2.3-1-2

SECTION 1. 50 IAC 2.3-1-1, AS AMENDED AT 26 IR 6, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

50 IAC 2.3-1-1 Applicability, provisions, and procedures

Authority: IC 4-22-2-21; IC 6-1.1-4-26; IC 6-1.1-31; IC 6-1.1-35-1
Affected: IC 5-3-1; IC 6-1.1-4; IC 6-1.1-15; IC 6-1.1-31-5; IC 6-1.1-31-6

Sec. 1. (a) This article applies to the assessment of all real property under IC 6-1.1-4.

(b) All real property assessed after February 28, 2002, must be assessed in accordance with the 2002 Real Property Assessment Manual, incorporated by reference under section 2 of this rule.

(c) In addition to the requirements established in the 2002 Real Property Assessment Manual and to fully address the requirements of IC 6-1.1-31-6, the county assessor must select a set of more specific guidelines to be applied by assessing officials in connection with the assessment of real property in their county. These guidelines must:

(1) contain provisions for the determination of true tax value following the instructions in the section of the 2002 Real Property Assessment Manual entitled "Approval of Mass Appraisal Methods"; and

(2) be approved by the state board of tax commissioners.

The state board of tax commissioners has approved the provisions contained in the "Real Property Assessment Guidelines for 2002—Version 'A'" dated May 10, 2001, **as amended to and including October 1, 2002**, incorporated by reference under section 2 of this rule. Other real property assessment guidelines proposed by a county must be submitted to, and approved by, the state board of tax commissioners before they may be used for the assessment of real property in that county.

(d) The purpose of this rule is to accurately determine "True Tax Value" as defined in the 2002 Real Property Assessment Manual, not to mandate that any specific assessment method be followed. The intent of the state board of tax commissioners is that any individual assessment is to be deemed accurate if it is a reasonable measure of "True Tax Value" as defined in the 2002 Real Property Assessment Manual. No technical failure to comply with the procedures of a specific assessing method violates this rule so long as the individual assessment is a reasonable measure of "True Tax Value", and failure to comply with the Real Property Assessment Guidelines for 2002—Version 'A' or other guidelines approved under subsection (c) does not in itself show that the assessment is not a reasonable measure of "True Tax Value".

(e) After July 1, 2001, and before November 1, 2001, the county assessor shall make the selection required under subsection (c). The method selected under subsection (c) must be used by all the assessing officials within the county, will serve as the appropriate method for calculating an assessment that is appealed under IC 6-1.1-15, and govern throughout the effective period of the 2002 reassessment. No method, other than the method selected by the county assessor under subsection (c), may be used for the assessment of real property under IC 6-1.1-4 within the county. Before November 1, 2001, the county assessor shall publish the selected method in accordance with IC 5-3-1 and notify the state board of tax commissioners, in writing, of the selection.

(f) If the county assessor elects, pursuant to IC 6-1.1-31-5, to consider additional factors not provided for in this rule or the manual incorporated herein by reference, the county assessor shall submit a written request for approval of such factors by the state board of tax commissioners, at least sixty (60) days before the assessments are made, and no later than January 1, 2002. (*Department of Local Government Finance; 50 IAC 2.3-1-1; filed May 23, 2001, 4:01 p.m.: 24 IR 3015; filed Aug 26, 2002, 10:36 a.m.: 26 IR 6*)

SECTION 2. 50 IAC 2.3-1-2 IS AMENDED TO READ AS FOLLOWS:

50 IAC 2.3-1-2 Incorporation by reference

Authority: IC 4-22-2-21; IC 6-1.1-4-26; IC 6-1.1-31; IC 6-1.1-35-1

Affected: IC 6-1.1

Sec. 2. (a) As used in this article, "2002 Real Property Assessment Manual" refers to the 2002 Real Property Assessment Manual, published by the state board of tax commissioners and dated May 10, 2001, **as amended to and including October 1, 2002. The amendments adopted as of October 1, 2002, eliminate references to the shelter allowance as required by House Enrolled Act 1001(ss).**

(b) As used in this article, "Real Property Assessment Guidelines for 2002—Version 'A'" refers to the Real Property Assessment Guidelines for 2002—Version 'A', published by the state board of tax commissioners and dated May 10, 2001, **as amended to and including October 1, 2002. The amendments incorporate minor changes and corrections to the Real Property Assessment Guidelines for 2002—Version 'A', published by the state board of tax commissioners and originally dated May 10, 2001, and eliminate references to the shelter allowance as required by House Enrolled Act 1001(ss).** The Real Property Assessment Guidelines for 2002—Version 'A' are Exhibit 1 to the 2002 Real Property Assessment Manual.

(c) The 2002 Real Property Assessment Manual and Real Property Assessment Guidelines for 2002—Version 'A' is incorporated by reference under the authority of IC 4-22-2-21(a)(3). (*Department of Local Government Finance; 50 IAC 2.3-1-2; filed May 23, 2001, 4:01 p.m.: 24 IR 3016*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 29, 2002 at 2:00 p.m., at the Indiana Government Center-North, 100 North Senate Avenue, Room 1045, (IEERB Conference Room) Indianapolis, Indiana the Department of Local Government Finance will hold a public hearing on proposed amendments to update the adoption date of matters incorporated by reference as a result of minor changes and corrections to the 2002 Real Property Assessment Manual and the Real Property Assessment Guidelines for 2002—Version A, published by the state board of tax commissioners and originally dated May 10, 2001, and to eliminate reference to the shelter allowance as required by House Enrolled Act 1001(ss). Parties interested in participating in the public hearing are encouraged to attend and submit written statements expressing their specific or general concerns, any suggested additions or revisions, and any documentation that may serve to support, clarify, or supplement their concerns, suggestions, or proposed revisions. The Department of Local Government Finance also encourages any interested party who has concerns, suggestions, or proposed revisions to contact Beth H. Henkel, General Counsel, Department of Local Government Finance at (317) 233-1495.

Proposed Rules

Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Room 1058 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Lisa Acobert
Commissioner
Department of Local Government Finance

TITLE 50 DEPARTMENT OF LOCAL GOVERNMENT FINANCE

NOTE: Under IC 6-1.1-31-1, the name of the State Board of Tax Commissioners is changed to Department of Local Government Finance, effective January 1, 2002.

Proposed Rule LSA Document #02-240

DIGEST

Amends 50 IAC 2.3-1-1 concerning the 2002 Real Property Assessment Manual to provide county assessors more flexibility in selection of methodology in real property assessment. Effective 30 days after filing with the secretary of state.

50 IAC 2.3-1-1

SECTION 1. 50 IAC 2.3-1-1, PROPOSED TO BE AMENDED AT 26 IR 86, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

50 IAC 2.3-1-1 Applicability, provisions, and procedures

Authority: IC 4-22-2-21; IC 6-1.1-4-26; IC 6-1.1-31; IC 6-1.1-35-1
Affected: IC 5-3-1; IC 6-1.1-4; IC 6-1.1-15; IC 6-1.1-31-5; IC 6-1.1-31-6

Sec. 1. (a) This article applies to the assessment of all real property under IC 6-1.1-4.

(b) All real property assessed after February 28, 2002, must be assessed in accordance with the 2002 Real Property Assessment Manual, incorporated by reference under section 2 of this rule.

(c) In addition to the requirements established in the 2002 Real Property Assessment Manual and to fully address the requirements of IC 6-1.1-31-6, the county assessor must select a set of more specific guidelines to be applied by assessing officials in connection with the assessment of real property in their county. These guidelines must:

- (1) contain provisions for the determination of true tax value following the instructions in the section of the 2002 Real Property Assessment Manual entitled "Approval of Mass Appraisal Methods"; and
- (2) be approved by the state board of tax commissioners.

The state board of tax commissioners has approved the provisions contained in the "Real Property Assessment Guidelines for 2002-Version 'A'" dated May 10, 2001, as amended to and including October 1, 2002, incorporated by reference under section 2 of this rule. Other real property assessment guidelines proposed by a county must be submitted to, and approved by, the state board of tax commissioners before they may be used for the assessment of real property in that county.

(d) The purpose of this rule is to accurately determine "True Tax Value" as defined in the 2002 Real Property Assessment Manual, not to mandate that any specific assessment method be followed. The intent of the state board of tax commissioners is that any individual assessment is to be deemed accurate if it is a reasonable measure of "True Tax Value" as defined in the 2002 Real Property Assessment Manual. No technical failure to comply with the procedures of a specific assessing method violates this rule so long as the individual assessment is a reasonable measure of "True Tax Value", and failure to comply with the Real Property Assessment Guidelines for 2002-Version 'A' or other guidelines approved under subsection (c) does not in itself show that the assessment is not a reasonable measure of "True Tax Value".

(e) After July 1, 2001, and before November 1, 2001, the county assessor shall make the selection required under subsection (c). The method selected under subsection (c) must be used by all the assessing officials within the county, will serve as the appropriate method for calculating an assessment that is appealed under IC 6-1.1-15, and govern throughout the effective period of the 2002 reassessment. No method, other than the method selected by the county assessor under subsection (c), may be used for the assessment of real property under IC 6-1.1-4 within the county. Before November 1, 2001, the county assessor shall publish the selected method in accordance with IC 5-3-1 and notify the state board of tax commissioners, in writing, of the selection.

(f) ~~If The county assessor elects, pursuant to IC 6-1.1-31-5, to may amend its selection of method of assessment or consider additional factors not provided for in this rule or the manual incorporated herein by reference, with the approval of the department of local government finance. The county assessor shall submit a written request for approval of such the selection of method or other factors by to the state board of tax commissioners, department of local government finance, at least sixty (60) days before the assessments are made. and no later than January 1, 2002. (Department of Local Government Finance; 50 IAC 2.3-1-1; filed May 23, 2001, 4:01 p.m.: 24 IR 3015)~~

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 29, 2002 at 2:00 p.m., at the Indiana Government Center-North,

100 North Senate Avenue, Room 1045, (IEERB Conference Room) Indianapolis, Indiana the Department of Local Government Finance will hold a public hearing on proposed amendments to provide county assessors more flexibility in selection of methodology in real property assessment. Parties interested in participating in the public hearing are encouraged to attend and submit written statements expressing their specific or general concerns, any suggested additions or revisions, and any documentation which may serve to support, clarify or supplement their concerns, suggestions, or proposed revisions. The Department of Local Government Finance also encourages any interested party who has concerns, suggestions, or proposed revisions to contact Beth H. Henkel, General Counsel, Department of Local Government Finance, at (317) 233-1495. Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Room 1058 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Lisa Acobert
Commissioner
Department of Local Government Finance

TITLE 52 INDIANA BOARD OF TAX REVIEW

Proposed Rule
LSA Document #02-206

DIGEST

Adds 52 IAC to establish standards to govern the practice of representatives before the Indiana board of tax review. Effective 30 days after filing with the secretary of state.

52 IAC 1

SECTION 1. 52 IAC 1 IS ADDED TO READ AS FOLLOWS:

ARTICLE 1. TAX REPRESENTATIVES

Rule 1. Definitions

52 IAC 1-1-1 Applicability

Authority: IC 6-1.5-6-1
Affected: IC 6-1.5

Sec. 1. The definitions in this rule apply throughout this article. (*Indiana Board of Tax Review; 52 IAC 1-1-1*)

52 IAC 1-1-2 “Board” defined

Authority: IC 6-1.5-6-1
Affected: IC 6-1.5-1-3

Sec. 2. “Board” refers to the Indiana board of tax review established under IC 6-1.5-1-3. References to the board in

this rule shall, where necessary, include its predecessor agency, the state board of tax commissioners. (*Indiana Board of Tax Review; 52 IAC 1-1-2*)

52 IAC 1-1-3 “Department” defined

Authority: IC 6-1.5-6-1
Affected: IC 6-1.1-30-1.1

Sec. 3. “Department” means the department of local government finance established under IC 6-1.1-30-1.1. (*Indiana Board of Tax Review; 52 IAC 1-1-3*)

52 IAC 1-1-4 “Practice before the board “ defined

Authority: IC 6-1.5-6-1
Affected: IC 6-1.5; IC 6-1.1-15

Sec. 4. “Practice before the board” means participation in any matters connected with a presentation to the board, or any of its members or employees relating to a client’s rights, privileges, or liabilities under Indiana’s property tax laws or rules. Such presentations include, but are not limited to, the following:

- (1) Preparing and filing necessary documents, except personal property returns.
- (2) Corresponding and communicating with the board.
- (3) Representing a client at hearings, on-site inspections, and meetings.

The term does not include the activities of any local unit of government participating before the board. (*Indiana Board of Tax Review; 52 IAC 1-1-4*)

52 IAC 1-1-5 “Property tax assessment board of appeals” defined

Authority: IC 6-1.5-6-1
Affected: IC 6-1.1-28-1

Sec. 5. “Property tax assessment board of appeals” means the county property tax assessment board of appeals established under IC 6-1.1-28-1. (*Indiana Board of Tax Review; 52 IAC 1-1-5*)

52 IAC 1-1-6 “Tax representative” defined

Authority: IC 6-1.5-6-1
Affected: IC 6-1.1-2-4; IC 6-1.1-15; IC 6-1.1-26-2

Sec. 6. “Tax representative” means a person who represents another person at a proceeding before the board, under IC 6-1.1-15. The term does not include:

- (1) the owner of the property (or person liable for the taxes under IC 6-1.1-2-4) that is the subject of the appeal;
- (2) a permanent full-time employee of the owner of the property (or person liable for the taxes under IC 6-1.1-2-4) who is the subject of the appeal;
- (3) representatives of local units of government appearing on behalf of the unit or as the authorized representative of another unit;
- (4) a certified public accountant, when the certified public

accountant is representing a client in a matter that relates only to personal property taxation; or
(5) an attorney who is a member in good standing of the Indiana bar or any person who is a member in good standing of any other state bar and who has been granted leave by the board to appear *pro hac vice*.

(*Indiana Board of Tax Review; 52 IAC 1-1-6*)

Rule 2. Tax Representatives

52 IAC 1-2-1 Practice requirements

Authority: IC 6-1.5-6-1

Affected: IC 6-1.1-15; IC 6-1.1-26

Sec. 1. (a) In order to practice before the board, a tax representative must:

- (1) be properly certified by the department; and
- (2) have a copy of a properly executed power of attorney from the taxpayer on the form prescribed by the board on file with the board before a hearing will be scheduled.

(b) Property tax representatives may not be certified to practice before the board for:

- (1) matters relating to real and personal property exemptions claimed on a Form 132 or 136;
- (2) claims that assessments or taxes are “illegal as a matter of law”, whether brought on:
 - (A) a Form 133 pursuant to IC 6-1.1-15-12(a)(6);
 - (B) a Form 17-T pursuant to IC 6-1.1-26-1(4);
 - (C) a Form 130 pursuant to IC 6-1.1-15-1; or
 - (D) any other form;
- (3) claims regarding the constitutionality of an assessment; or
- (4) any other representation that involves the practice of law.

(c) Notwithstanding subsection (a)(1), the board may grant leave to practice before the board to a tax representative who is properly licensed or certified in another state. (*Indiana Board of Tax Review; 52 IAC 1-2-1*)

52 IAC 1-2-2 Communication with client or prospective client

Authority: IC 6-1.5-6-1

Affected: IC 6-1.1-2-4; IC 6-1.1-15

Sec. 2. (a) No certified property tax representative shall, with respect to any matter relating to practice before the board, in any way use or participate in the use of any form of public communication containing a:

- (1) false, fraudulent, unduly influencing, coercive, or unfair statement or claim; or
- (2) misleading or deceptive statement or claim.

(b) A property tax representative shall advise the client or prospective client in writing, using a typeface of not less than 12-point, either on the power of attorney or in some

other form that may be reasonably interpreted by the taxpayer (the property owner or person liable for the taxes under IC 6-1.1-2-4) to set forth the rights of the taxpayer with regard to his or her appeal, the statement, “I understand that by authorizing _____ to serve as my certified property tax representative, I am aware of and accept the possibility that the property value may increase as a result of filing an administrative appeal with the board. I further understand that the certified property tax representative is not an attorney and may not present arguments of a legal nature on my behalf. I understand that legal issues relating to my assessment that may now exist or may be discovered at some time in the future will not and cannot be addressed by the certified property tax representative, and that if not raised before the board may not be raised at a later stage of my assessment appeal.”.

(c) The disclosure shall be signed by the taxpayer. The certified property tax representative shall provide the taxpayer with a copy of the disclosure and shall be required to provide a copy of the disclosure to the board, upon request. Failure to provide a signed copy of disclosure upon request may be grounds for:

- (1) denying the tax representative the right to represent the taxpayer with respect to the property subject to the pending administrative appeal; or
- (2) a recommendation of disciplinary action to the department under 50 IAC 15-5-8.

(d) A disclosure properly filed or presented to the department by the tax representative in connection with the representation of the taxpayer in an appeal from a proceeding before the department or the property tax assessment board of appeals may be presented in lieu of the disclosure described in subsection (b). (*Indiana Board of Tax Review; 52 IAC 1-2-2*)

52 IAC 1-2-3 Prohibitions; obligations

Authority: IC 6-1.5-6-1

Affected: IC 6-1.1-2-4; IC 6-1.1-15

Sec. 3. A certified tax representative shall:

- (1) not knowingly misrepresent any information or act in a fraudulent manner;
- (2) not prepare documents or provide evidence in a property assessment appeal unless the representative is authorized by the property owner (or person liable for the taxes under IC 6-1.1-2-4) to do so and any required authorization form has been filed;
- (3) not knowingly submit false or erroneous information in a property assessment appeal;
- (4) use the appraisal standards and methods required by rules adopted by the department or the board when the representative submits appraisal information in a property assessment appeal; and
- (5) notify the property owner (or person liable for the

taxes under IC 6-1.1-2-4) of all matters relating to the review of the assessment of taxpayers' property before the board, including, but not limited to, the following:

(A) The tax representative's filing of all necessary documents, correspondence, and communications with the board.

(B) The dates and substance of all hearings, on-site inspections, and meetings.

(Indiana Board of Tax Review; 52 IAC 1-2-3)

52 IAC 1-2-4 Contingent fees

Authority: IC 6-1.5-6-1

Affected: IC 6-1.1-15

Sec. 4. (a) In the event a tax representative charges a contingent fee for any matter relating to practice before the board, the tax representative may not testify at a hearing without first disclosing the existence of the contingent fee arrangement.

(b) As used in this section, "contingent fee" includes a fee, whether accruing to the tax representative or to the entity with which the tax representative is affiliated, that is based on a percentage of the:

- (1) refund obtained;
- (2) taxes saved; or
- (3) reduction in assessed value.

(c) Failure to disclose the existence of a contingent fee arrangement may result in the presumption that a contingent fee arrangement exists between the taxpayer and the tax representative *(Indiana Board of Tax Review; 52 IAC 1-2-4)*

52 IAC 1-2-5 Certification; revocation

Authority: IC 6-1.5-6-1

Affected: IC 6-1.1-15; IC 6-1.1-35.5-8

Sec. 5. (a) Upon recommendation of the board to the department, the following may be grounds for the department to deny, suspend, or revoke the certification of a tax representative:

- (1) Violation of any rule of practice before the established under this article.
- (2) Gross incompetence in the tax representative's practice before the board.
- (3) Dishonesty or fraud committed while practicing before the board.
- (4) Violation of the standards of ethics or rules of solicitation adopted by the department or the board.

(b) If, after a hearing under the rules of the department, it is found that the tax representative has committed one of the acts described in subsection (a), the certification of the tax representative may be subject denial, suspension, or revocation on the same terms and conditions as if the violation were one committed in connection with practice before the property tax assessment board of appeals or the department. *(Indiana Board of Tax Review; 52 IAC 1-2-5)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 30, 2002 at 2:00 p.m., at the Indiana Government Center-North, 100 North Senate Avenue, Room 1045, Indianapolis, Indiana the Indiana Board of Tax Review will hold a public hearing on proposed new rules to govern the practice of representatives before the Indiana board of tax review. Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Room 1058 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Annette Biesecker

Chairman

Indiana Board of Tax Review

TITLE 326 AIR POLLUTION CONTROL BOARD

Proposed Rule

LSA Document #02-55

DIGEST

Amends 326 IAC 20-25 concerning emissions from reinforced plastics composites fabricating emission units. Adds 326 IAC 20-48 concerning national emission standards for hazardous air pollutants from boat manufacturing. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: March 1, 2002, Indiana Register (25 IR 2045).

Second Notice of Comment Period: July 1, 2002, Indiana Register (25 IR 3488).

Notice of First Hearing: July 1, 2002, Indiana Register (25 IR 3493).

Date of First Hearing: September 4, 2002.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4, until the board has conducted a third comment period that is at least twenty-one (21) days long. Because this proposed rule is not substantively different from the draft rule published on July 1, 2002, at 25 IR 3488, the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from July 1, 2002, through July 31, 2002, on IDEM's draft rule language. IDEM received comments from the following party:

National Marine Manufacturers Association, NMMA

Following is a summary of the comments received and IDEM's responses thereto:

Proposed Rules

Comment: It is NMMA's understanding that IDEM is amending 326 IAC 20-48 to incorporate by reference 40 CFR Subpart VVVV (66 FR 44232, August 22, 2001, and 65 FR 50504, October 3, 2001). By incorporating 40 CFR Subpart VVVV, IDEM exempts boat builders from 326 IAC 20-25, except for pigmented gel coat operations, clear gel coat operations, and tooling gel coat operations. In the case of these three (3) processes, boat builders have the option to be able to use gel coat with a higher average hazardous air pollutant (HAP) content, if the material is applied by nonatomized methods. These proposed average HAP limits are listed in 326 IAC 20-48-2. Boat builders can also choose to continue to use atomized application methods and comply with the gel coat standards in the boat manufacturing national emission standards for hazardous air pollutants (NESHAP). Other provisions include adoption of the compliance dates in the federal rule and references or methods to estimate HAP emissions from boat manufacturing. Provided that NMMA is correct in its understanding of the intent of this new rule, our members can support the IDEM plan. (NMMA)

Response: IDEM has developed draft rule language for a new rule, 326 IAC 20-48, Emission Standards for Hazardous Air Pollutants for Boat Manufacturing, and NMMA's understanding of the intent of this new rule is correct.

Comment: NMMA is concerned that its members did not receive direct notification when changes were first proposed in the Indiana Register in March 2002, and requests that IDEM directly notify them of future rulemakings that affect their businesses. (NMMA)

Response: IDEM appreciates the commenter's interest in this rule. The first comment period is an opportunity for stakeholders to comment on the rulemaking prior to draft language being developed. While IDEM often provides direct notification to interested parties of draft rule language published in the second notice, we typically do not provide extra notice of the first comment period beyond publication in the Indiana Register. The Indiana Register is easily accessible to stakeholders on the state of Indiana Web site. In this case, we did provide direct notice of the second comment period and draft rule language to interested parties in July 2002, including NMMA.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On September 4, 2002, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of a new rule, 326 IAC 20-48, and amendments to 326 IAC 20-25.

No comments were made at the first hearing.

326 IAC 20-25-1 **326 IAC 20-25-5**
326 IAC 20-25-3 **326 IAC 20-25-7**
326 IAC 20-25-4 **326 IAC 20-48**

SECTION 1. 326 IAC 20-25-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-25-1 Applicability

Authority: IC 13-14-8; IC 13-15-2-1; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-17-3

Sec. 1. (a) This rule applies to owners or operators of sources that emit or have the potential to emit ten (10) tons per year of any hazardous air pollutant (HAP) or twenty-five (25) tons per year of any combination of HAPs, and that meet all of the following criteria:

- (1) Manufacture reinforced plastics composites parts, products, or watercraft.
- (2) Have an emission unit where resins and gel coats that contain styrene are applied and cured using the open molding process.
- (3) Have actual emissions of styrene equal to or greater than three (3) tons per year.

(b) Except as provided in section ~~3(e)~~ **3(d)** of this rule, in the event there is a conflict between this rule and any existing federal or state statute or federal or state rule, the more stringent requirement shall apply.

(c) If a source is subject to 326 IAC 20-48 concerning emission standards for hazardous air pollutants for boat manufacturing, the source is exempt from this rule after the following compliance dates for 326 IAC 20-48:

- (1) August 23, 2004, for an existing source that is a major source on or before August 22, 2001.**
- (2) One (1) year after becoming a major source for an existing or new nonmajor source.**
- (3) Upon startup for a new major source.**

(Air Pollution Control Board; 326 IAC 20-25-1; filed Feb 5, 2001, 9:23 a.m.: 24 IR 2406)

SECTION 2. 326 IAC 20-25-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-25-3 Emission standards

Authority: IC 13-14-8; IC 13-15-2-1; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-17-3

Sec. 3. (a) Except as provided in subsections ~~(e)~~; ~~(f)~~; **(d)**, **(e)**, and ~~(h)~~; **(g)**, owners and operators of sources subject to this rule shall comply with the provisions of this section on or before January 1, 2002. The total **hazardous air pollutants** (HAP) monomer content of the following materials shall be limited depending on the application method and products produced as specified in the following tables:

TABLE I Fiber Reinforced Plastics Composites Products Except Watercraft	HAP Monomer Content, Weight Percent
Resin, Manual, or Mechanical Application	
Production-Specialty Products	48*
Production-Noncorrosion Resistant Unfilled	35*
Production-Noncorrosion Resistant Filled (≥35% by weight)	38
Production, Noncorrosion Resistant, Applied to Thermoformed Thermoplastic Sheet	42
Production, Class I, Flame and Smoke	60*
Shrinkage Controlled	52
Tooling	43

Gel Coat Application	
Production-Pigmented	37
Clear Production	44
Tooling	45
Production-Pigmented, subject to ANSI ^a standards	45
Production-Clear, subject to ANSI ^a standards	50

^a American National Standards Institute.

TABLE II Watercraft Products	HAP Monomer Content, Weight Percent
Resin, Manual or Mechanical Application	
Production-Specialty Products	48*
Production-Noncorrosion Resistant Unfilled	35*
Production-Noncorrosion Resistant Filled (≥35% by weight)	38
Shrinkage Controlled	52
Tooling	43*
Gel Coat Application	
Production-Pigmented and Base Coat Gel Coat	34
Clear Production and Tooling	48

*Categories that must use mechanical nonatomized application technology or manual application as stated in subsection (b).

(b) Except as provided in subsection (f), (e), the following categories of materials in subsection (a) shall be applied using mechanical nonatomized application technology or manual application:

- (1) Production noncorrosion resistant, unfilled resins from all sources.
- (2) Production, specialty product resins from all sources.
- (3) Tooling resins used in the manufacture of watercraft.
- (4) Production resin used for Class I flame and smoke products.

(c) Unless specified in subsection (b), gel coat application and mechanical application of resins shall be by any of the following spray technologies:

- (1) Nonatomized application technology.
- (2) Air-assisted airless.
- (3) Airless.
- (4) High volume, low pressure.
- (5) Equivalent emission reduction technologies to subdivisions (2) through (4).

(d) Cleaning operations for resin and gel coat application equipment are as follows:

(1) For routine flushing of resin and gel coat application equipment such as spray guns, flowcoaters, brushes, rollers, and squeegees, a cleaning solvent shall contain no HAPs. This emission standard does not apply to solvents used for removing cured resin or gel coat from application equipment.

(2) A source must store HAP containing solvents used for removing cured resin or gel coat in containers with covers. The covers must have no visible gaps and must be in place at all times, except when equipment is placed in or removed from the container.

(3) Recycled cleaning solvents that contain less than or equal to five percent (5%) HAP by weight are considered to contain no HAP for the purposes of this subsection.

(e) (d) A source that was issued a permit pursuant to 326 IAC 2 on or after June 28, 1998, but prior to the effective date of this rule, and that obtained a revised best available control technology (BACT) determination in the permit for emission units, is not subject to this section until the permit is renewed, or the emission unit undergoes a modification that increases the potential to emit styrene.

(f) (e) A new or reconstructed emission unit subject to 326 IAC 2-4.1-1 is not subject to the requirements of this section.

(g) (f) The owner or operator of a source subject to this rule may comply with this section using monthly emission averaging within each resin or gel coat application category listed in subsection (a) without prior approval by the commissioner.

(h) (g) Upon written application by the source, the commissioner may approve the following:

- (1) Enforceable alternative emission reduction techniques that are at least equally protective of the environment as the emission standards in subsections (a) through (d): (c).
- (2) Use of monthly emissions averaging for any or all material or application categories listed in subsection (a) if the following conditions are met:

- (A) The source shows that emissions did not exceed the emissions that would have occurred if each emission unit had met the requirements of subsections (a) through (c).
- (B) The source uses any one (1) or a combination of the following emission reduction techniques:

- (i) Resins or gel coats with HAP monomer contents lower than specified in subsection (a).
- (ii) Vapor suppressed resins.
- (iii) Vacuum bagging or other similar technique. This item does not include resin transfer molding or compression molding.
- (iv) Air pollution control equipment where the emissions are estimated based on parametric measurements or stack monitoring.
- (v) Controlled spray used in combination with automated actuators or robots.

Proposed Rules

- (vi) Controlled spray that includes the following:
- (AA) Mold flanges.
 - (BB) Spray technique.
 - (CC) Spray gun pressure.
 - (DD) Means of verifying continuous use of the controlled spray technique, such as mass balance of materials and products (surface area and thickness of product), as approved by the commissioner prior to implementation.
- (vii) Emission reduction techniques approved under subdivision (1).

Sources using averaging shall not use spray equipment that produces higher emissions than the equipment specified in **subsections subsection (c)(2) through (c)(5)**.

(†) **(h)** To determine emission estimates, the following references or methods shall be used:

- (1) "Unified Emission Factors for Open Molding of Composites", ~~April 1999~~, **July 2001***, except use of controlled spray emission factors must be approved by the commissioner.
- (2) "Compilation of **Air Pollution** Emission Factors ~~Volume 1, Fifth Edition, and supplements, January 1995*~~, **AP-42***" **as defined in 326 IAC 1-2-20.5**, except for emissions from hand layup and spray layup operations **must be calculated using emission factors referenced in subdivision (1) or site-specific values using information in subdivision (3)**.
- (3) Site-specific values or other means of quantification provided the site-specific values and the emission factors are acceptable to the commissioner and the U.S. EPA.

**These documents are incorporated by reference. Copies of the "Compilation of Emission Factors" and "Unified Emission Factors for Open Molding of Composites" referenced in this article may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington D.C. 20204 or are available for review and copying from at the Indiana Department of Environmental Management, Office of Air Management, Department of Environmental Management, Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana. (Air Pollution Control Board; 326 IAC 20-25-3; filed Feb 5, 2001, 9:23 a.m.: 24 IR 2408)*

SECTION 3. 326 IAC 20-25-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-25-4 Work practice standards

Authority: IC 13-14-8; IC 13-15-2-1; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-17-3

Sec. 4. On or before March 1, 2001, each owner or operator of a source or emission unit subject to this rule shall operate in accordance with the following work practice standards:

- (1) Nonatomizing spray equipment shall not be operated at

- pressures that atomize the material during the application process.
- (2) Except for mixing containers as described in **subsection subdivision (7)**, **hazardous air pollutant** (HAP) containing materials shall be kept in a closed container when not in use.
- (3) Solvents sprayed during cleanup and resin changes shall be directed into solvent collection containers.
- (4) Solvent collection containers shall be kept closed when not in use.
- (5) Clean-up rags with solvent shall be stored in closed containers.
- (6) Closed containers shall be used for the storage of the following:

- (A) All production and tooling resins that contain HAPs.
- (B) All production and tooling gel coats that contain HAPs.
- (C) Waste resins and gel coats that contain HAPs.
- (D) Cleaning materials, including waste cleaning materials.
- (E) Other materials that contain HAPs.

The covers of the closed containers must have no visible gaps and must be in place at all times, except when equipment is placed in or removed from the container.

- (7) All resin and gel coat mixing containers with a capacity equal to or greater than fifty-five (55) gallons must have a cover with no visible gaps in place at all times except when material is being added to or removed from a container, or when mixing or pumping equipment is being placed in or removed from a container.

(8) For routine flushing of resin and gel coat application equipment, such as spray guns, flowcoaters, brushes, rollers, and squeegees, owners or operators must use a cleaning solvent that contains no HAPs. However, recycled cleaning solvents that contain less than or equal to five percent (5%) HAP by weight are considered to contain no HAP for the purposes of this subdivision. For removing cured resin or gel coat from application equipment, no organic HAP limit applies.

(Air Pollution Control Board; 326 IAC 20-25-4; filed Feb 5, 2001, 9:23 a.m.: 24 IR 2410)

SECTION 4. 326 IAC 20-25-5 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-25-5 Testing requirements

Authority: IC 13-14-8; IC 13-15-2-1; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-17-3

Sec. 5. (a) An initial performance test is required when using air pollution control equipment to demonstrate compliance with the standards in section 3 of this rule. Testing shall be performed in accordance with 326 IAC 3-6, concerning source sampling procedures, and 40 CFR 63.7*, ~~(July 1, 1998)*~~, performance testing requirements.

- (b) When using air pollution control equipment to demonstrate compliance with the standards in section 3 of this rule, the following test methods shall be used:

(1) 40 CFR 60, Method 25/25A, Appendix A*, ~~(July 1, 1998)*~~, shall be used to measure total hydrocarbon emissions.

(2) 40 CFR 60, Method 18, Appendix A*, ~~(July 1, 1998)*~~, shall be used to measure styrene and methyl methacrylate emissions.

(3) 40 CFR 51, Method 204, Appendix M*, ~~(July 1, 1998)*~~, shall be used to determine capture efficiency. As an alternative to the procedures specified in 40 CFR 51, Method 204, Appendix M*, ~~(July 1, 1998)*~~, an owner or operator required to conduct a capture efficiency test may use any capture efficiency protocol and test methods that satisfy the criteria of either the data quality objective or the lower confidence limit approach as described in the EPA Guidelines for Determining Capture Efficiency, which is included in Appendix A to Subpart KK to 40 CFR Part 63*. ~~(July 1, 1998)*~~. The owner or operator may exclude work stations that have never been subject to such capture efficiency determinations.

(c) Compliance with the HAP monomer content and usage limitations shall be determined using one (1) of the following:

- (1) The manufacturer's certified product data sheet.
- (2) The manufacturer's material safety data sheet.
- (3) Sampling and analysis, using any of the following test methods, as applicable:

(A) 40 CFR 60, Method 24, Appendix A*, ~~(July 1, 1998)*~~, shall be used to measure the total volatile HAP content of resins and gel coats. Method 24 may be modified for measuring the volatile HAP content of resins or gel coats to require that the procedure be performed on uncatalyzed resin or gel coat samples.

(B) 40 CFR 63, Method 311, Appendix A*, ~~(July 1, 1998)*~~, shall be used to measure HAP content in resins and gel coats by direct injection into a gas chromatograph.

(C) Upon written application by the source, the commissioner may approve an alternative test method.

When a MSDS, a certified product data sheet, or other document specifies a range of values, the values resulting in the greatest calculated emissions shall be used for determining compliance with this rule.

***These documents are incorporated by reference.** Copies of the Code of Federal Regulation (CFR) referenced in this section may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D. C. 20204 or are available for review and copying from at the **Indiana Department of Environmental Management**, Office of Air Management, Department of Environmental Management, Quality, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 20-25-5; filed Feb 5, 2001, 9:23 a.m.: 24 IR 2410*)

SECTION 5. 326 IAC 20-25-7 IS AMENDED TO READ AS FOLLOWS:

326 IAC 20-25-7 Reporting requirements

Authority: IC 13-14-8; IC 13-15-2-1; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-17-3

Sec. 7. (a) On or before June 1, 2001, the owner or operator of a source subject to this rule shall submit an initial notification report to the commissioner. The notification report shall include all of the following:

- (1) Name and address of the owner or operator.
- (2) Address of the physical location of the source.
- (3) Statement verifying that the source is subject to the rule signed by a responsible official as set forth in 326 IAC 2-7-1(34).

(b) On or before March 1, 2002, the owner or operator of a source subject to this rule shall submit an initial statement of compliance to the commissioner. The initial statement of compliance shall include all of the following:

- (1) Name and address of the owner or operator.
- (2) Address of the physical location.
- (3) Statement signed by a responsible official, as set forth in 326 IAC 2-7-1(34), certifying that the source achieved compliance on or before January 1, 2002, the method used to achieve compliance, and that the source is in compliance with all the requirements of this rule.

(c) Sources using monthly emissions averaging pursuant to section ~~3(h)(2)~~ **3(g)(2)** of this rule, shall submit a quarterly summary report and supporting calculations. (*Air Pollution Control Board; 326 IAC 20-25-7; filed Feb 5, 2001, 9:23 a.m.: 24 IR 2411*)

SECTION 6. 326 IAC 20-48 IS ADDED TO READ AS FOLLOWS:

Rule 48. Emission Standards for Hazardous Air Pollutants for Boat Manufacturing

326 IAC 20-48-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-15-2-1; IC 13-17-3-4

Affected: IC 13-12-3-1

Sec. 1. (a) This rule applies to sources as provided in 40 CFR 63.5683* (66 FR 44232, August 22, 2001, and 66 FR 50504, October 3, 2001).

(b) The air pollution control board incorporates by reference 40 CFR, Subpart VVVV*, (66 FR 44232, August 22, 2001, and 66 FR 50504, October 3, 2001), National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing, except for the following gel coat applications in Table 2 to Subpart VVVV, 40 CFR 63*; Alternative Organic Hazardous Content Requirements for Open Molding Resin and Gel Coat Operations:

- (1) 3. Pigmented gel coat operations.
- (2) 4. Clear gel coat operations.
- (3) 7. Tooling gel coat operations.

Proposed Rules

(c) Sources subject to this rule are exempt from 326 IAC 20-25 after the following compliance dates as provided in Table 1 to Subpart VVVV, 40 CFR 63*; Compliance Dates for New and Existing Boat Manufacturing Facilities:

- (1) August 23, 2004, for an existing source that is a major source on or before August 22, 2001.
- (2) One (1) year after becoming a major source for an existing or new nonmajor source.
- (3) Upon startup, whichever is later, for a new major source.

(d) A source shall use the following references or methods to estimate emissions:

- (1) "Unified Emission Factors for Open Molding of Composites", July 2001*, except use of controlled spray emission factors must be approved by the commissioner and U.S. EPA.
- (2) "Compilation of Air Pollution Emission Factors AP-42"*, as defined in 326 IAC 1-2-20.5, except emissions from hand layup and spray layup operations must be calculated using emission factors referenced in subdivision (1) or site-specific values using information in subdivision (3).
- (3) Site-specific values or other means of quantification provided the site-specific values and the emission factors are acceptable to the commissioner and the U.S. EPA.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 20-48-1*)

326 IAC 20-48-2 Alternative organic hazardous air pollutant content requirements for open molding gel coat operations

Authority: IC 13-14-8; IC 13-15-2-1; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-17-3

Sec. 2. In addition to alternative organic HAP content requirements for open molding resin operations contained in Table 2 to Subpart VVVV, 40 CFR 63, the alternative HAP content requirements for gel coat operations are as follows:

Gel Coat Application		
For this operation	And this application method	You must not exceed this weighted-average percent organic HAP content (weight percent) requirement
Pigmented gel coat operations	Atomized (spray)	33 percent
Clear gel coat operations	Atomized (spray)	48 percent

Tooling gel coat operations	Atomized (spray)	40 percent
Pigmented gel coat operations	Nonatomized (nonspray)	40 percent
Clear gel coat operations	Nonatomized (nonspray)	55 percent
Tooling gel coat operations	Nonatomized (nonspray)	54 percent

(*Air Pollution Control Board; 326 IAC 20-48-2*)

326 IAC 20-48-3 Work practice standards

Authority: IC 13-14-8; IC 13-15-2-1; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-17-3

Sec. 3. In addition to 40 CFR 63.5731* and 40 CFR 63.5734(b)*, the following work practice standards are required:

- (1) Nonatomizing spray equipment shall not be operated at pressures that atomize the material during the application process.
- (2) Solvents sprayed during cleanup and resin changes shall be directed into solvent collection containers.
- (3) For routine flushing of resin and gel coat application equipment, such as spray guns, flowcoaters, brushes, rollers, and squeegees, owners or operators must use a cleaning solvent that contains no hazardous air pollutants (HAPs). However, recycled cleaning solvents that contain less than or equal to five percent (5%) HAP by weight are considered to contain no HAP for the purposes of this subdivision. For removing cured resin or gel coat from application equipment, no organic HAP limit applies.
- (4) Clean-up rags with solvent shall be stored in closed containers.
- (5) Closed containers shall be used for the storage of the following:
 - (A) All production and tooling resins that contain HAPs.
 - (B) All production and tooling gel coats that contain HAPs.
 - (C) Waste resins and gel coats that contain HAPs.
 - (D) Cleaning materials, including waste cleaning materials.
 - (E) Other materials that contain HAPs.

The covers of the closed containers must have no visible gaps and must be in place at all times, except when equipment is placed in or removed from the container.

*These documents are incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Indiana Government Center-North, Tenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 20-48-3*)

326 IAC 20-48-4 Operator training

Authority: IC 13-14-8; IC 13-15-2-1; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-17-3

Sec. 4. (a) Each owner or operator shall train all new and existing personnel, including contract personnel, who are involved in resin and gel coat spraying and applications that could result in excess emissions if performed improperly according to the following schedule:

- (1) All personnel hired shall be trained within fifteen (15) days of hiring.**
- (2) To ensure training goals listed in subsection (b) are maintained, all personnel shall be given refresher training annually.**
- (3) Personnel who have been trained by another owner or operator subject to this rule are exempt from subdivision (1) if written documentation that the employee's training is current is provided to the new employer.**

(b) The lesson plans shall cover, for the initial and refresher training, at a minimum, all of the following topics:

- (1) Appropriate application techniques.**
- (2) Appropriate equipment cleaning procedures.**
- (3) Appropriate equipment setup and adjustment to minimize material usage and overspray.**

(c) The owner or operator shall maintain the following training records on site and available for inspection and review:

- (1) A copy of the current training program.**
- (2) A list of all current personnel, by name, that are required to be trained and the dates they were trained and the date of the most recent refresher training.**

(d) Records of prior training programs and former personnel are not required to be maintained. (*Air Pollution Control Board; 326 IAC 20-48-4*)

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on November 6, 2002 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on proposed amendments to 326 IAC 20-25 and new rules under 326 IAC 20-48. The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rule and proposed amendments. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing. Additional information regarding this action may be obtained from Jean Beauchamp, Office of Air Quality, Rules Section, (317) 232-8424 or (800) 451-6027 (in Indiana). Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator

Indiana Department of Environmental Management

100 North Senate Avenue

P.O. Box 6015

Indianapolis, Indiana 46206-6015

or call (317) 233-0855. (TDD): (317) 232-6565. Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification. Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Janet G. McCabe

Assistant Commissioner

Office of Air Management

TITLE 326 AIR POLLUTION CONTROL BOARD

Proposed Rule

LSA Document #02-122

DIGEST

Amends 326 IAC 6-1-14 concerning particulate rules, nonattainment area limitations in Wayne County. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: March 1, 2002, Indiana Register (25 IR 2592).

Second Notice of Comment Period: July 1, 2002, Indiana Register (25 IR 3493).

Notice of First Hearing: July 1, 2002, Indiana Register (25 IR 3495).

Date of First Hearing: September 4, 2002.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4, until the board has conducted a third comment period that is at least twenty-one (21) days long. Because this proposed rule is not substantively different from the draft rule published on July 1, 2002, at 25 IR 3493, the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from July 1, 2002, through July 31, 2002, on IDEM's draft rule language.

No comments were received during the second comment period.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On September 4, 2002, the air pollution control board (board) conducted the first public hearing/board meeting concerning the

Proposed Rules

development of amendments to 326 IAC 6-1-14. Comments were made by the following party:

Anthony Sullivan, Richmond Power and Light Company, RPL
Following is a summary of the comments received and IDEM's responses thereto:

Comment: We recommend that the board preliminarily adopt the draft rule and we will continue to work with the department to resolve the issue of limiting the combined tons per year to seven hundred (700) tons per year. (RPL)

Response: The department will reevaluate the basis for this limit and will work with Richmond Power and Light Company to resolve this issue.

326 IAC 6-1-14

SECTION 1. 326 IAC 6-1-14, AS AMENDED AT 25 IR 756, SECTION 15, IS AMENDED TO READ AS FOLLOWS:

326 IAC 6-1-14 Wayne County

Authority: IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 14. In addition to the emission limitations contained in section 2 of this rule, the following limitations apply to sources in Wayne County:

WAYNE COUNTY

Source	NEDS Plant ID	Point Input ID	Process	Emission Limits		
				tons/yr	lbs/million BTU	grains/dscf
Belden Wire and Cable (office)	0003	1P	Oil Boiler 39 MMBTU/Hr.	8.0	0.015	
Dana Perfect Circle-Richmond	0004	2P	Cupola	51.50		0.133
Joseph H. Hill Co. PLT-A	0007	5P	3 Oil Boilers (Single Stack) 30 MMBTU/Hr.	1.40	0.015	
		6P	Oil Boiler 22.5 MMBTU/Hr.	1.0	0.015	
Joseph H. Hill Co. PLT-B	0031	7P	3 Oil Boilers (Single Stack) 175 MMBTU/Hr.	5.60	0.015	
Joseph H. Hill Co. PLT-C	0032	8P	Oil Boiler No. 1 19 MMBTU/Hr.	0.70	0.015	
		9P	Oil Boiler No. 2 7 MMBTU/Hr.	0.30	0.015	
Dana Perfect Circle-Hagerstown	0014	10P	Gas Boiler 50 MMBTU/Hr.	2.10	0.010	
Richmond Milestone Contractors	0008	13P	Rotary Dryer	50.80		0.158
Cambridge City Milestone Contractors	0028	14P	Rotary Dryer	67.4		0.218
Johns Manville Corporation	0006	15P	25 MMBTU/Hr. Natural Gas Boiler	1.5	0.0137	
		16P	Lines 2 and 3 Natural Gas Melt Furnaces	7.8		0.01
		17P	Line 6 Electric Melt Furnace	3.9		0.020
		19P	Line 3 Curing Oven	27.4		0.02
		20P	Line 6 Curing Oven	6.2		0.02
		21P	Line 2 Forming Process	58.3		0.02
		22P	Line 3 Forming Process	123.6		0.02
		23P	Line 6 Forming Process	45.4		0.02
Richmond State Hospital	0025	24P	(4 Gas/Oil Boilers) 123.4 MMBTU/Hr.	7.7	0.014	
Schrock Cabinet Company	0015	26P	Wood Boiler 10 MMBTU/Hr.	7.60	0.190	
		27P	Coal Boiler 10 MMBTU/Hr.	6.90	0.280	
Richmond Power & Light	0009	28P	Coal Boiler No. 1 385 MMBTU/Hr.	71.6 320**	0.19**	
		29P	Coal Boiler No. 2 730 MMBTU/Hr.	233.3 700**	0.22**	
Earlham College		31P	Oil Boiler 14 MMBTU/Hr.	0.70	0.080	
Purina Mills, Inc.	0033	32P	2 Oil Boilers One Stack 27 MMBTU/Hr.	1.0	0.015	
Wallace Metals	0011	33P	Oil Boiler 6.5 MMBTU/Hr.	0.10	0.015	
Design & Manufacturing		34P	1 Coal Boiler 43.5 MMBTU/Hr.	38.20	0.350	
Barrett Paving Materials	0029	24	Primary Crushing	17.40		
			Secondary Crushing	63.3		
			Screening/Conveying/Handling	292.4		

Wayne County Farm Bureau	0021	39	Shipping/Receiving, Transfer- ring/Conveying, Screening/Cleaning, Drying	10.40
Farmer's Grain	0017	47	Shipping, Receiving, Transferring, Con- veying, Drying	732.0
Belden Wire and Cable (plant)	0003	39	Plastic Compounding	8.0
			Rubber Mixing	0.14
			Pneumatic	10.80

****The combined emissions from Coal Boiler No. 1 and Coal Boiler No. 2 shall not exceed 0.22 lbs/MMBTU or 700 tons/year. (Air Pollution Control Board; 326 IAC 6-1-14; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2482; filed Jun 15, 1995, 1:00 p.m.: 18 IR 2727; errata filed Jul 6, 1995, 5:00 p.m.: 18 IR 2795; filed Sep 24, 1999, 9:57 a.m.: 23 IR 301; filed Nov 8, 2001, 2:02 p.m.: 25 IR 756)**

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on November 6, 2002 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana, the air pollution control board will hold a public hearing on proposed amendments to 326 IAC 6-1-14.

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Jean Beauchamp, Office of Air Quality, Rules Section, (317) 232-8424 or (800) 451-6027 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015

or call (317) 233-0855. (TDD): (317) 232-6565. Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Air Quality, Tenth Floor, 100 North Senate Avenue and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Janet G. McCabe
Assistant Commissioner
Office of Air Quality

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on November 6, 2002 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A,

Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on proposed amendments to 326 IAC 6-1-14. The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Jean Beauchamp, Office of Air Quality, Rules Section, (317) 232-8424 or (800) 451-6027 (in Indiana). Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

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or call (317) 233-0855. (TDD): (317) 232-6565. Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification. Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Janet G. McCabe
Assistant Commissioner
Office of Air Quality

TITLE 327 WATER POLLUTION CONTROL BOARD

Proposed Rule
LSA Document #01-348

DIGEST

Amends 327 IAC 8-2 and 327 IAC 8-2.1 and adds 327 IAC 8-2.5 and 327 IAC 8-2.6 concerning interim enhanced surface

Proposed Rules

water treatment, disinfectants/disinfection byproducts, and filter backwash. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: October 1, 2001, Indiana Register (25 IR 206).

Second Notice of Comment Period: June 1, 2002, Indiana Register (25 IR 2863).

Notice of First Hearing: June 1, 2002, Indiana Register (25 IR 2863).

Change of Notice for First Hearing: August 1, 2002, Indiana Register (25 IR 3806).

Date of First Hearing: August 14, 2002.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4, until the board has conducted a third comment period that is at least twenty-one (21) days long. Because this proposed rule is not substantively different from the draft rule published on June 1, 2002, at 25 IR 2863, the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from June 1, 2002, through June 30, 2002, on IDEM's draft rule language. IDEM received comments from the following parties:

Indiana-American Water Company, Inc. (IAWC)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: In 327 IAC 8-2-1(36)(A), *Cryptosporidium* as an indicator for ground water under the direct influence of surface water is only applicable to Subpart H systems serving > 10,000 population. (IAWC)

Response: IDEM agrees. The language has been changed.

Comment: In 327 IAC 8-2-1(46), should the rest of the information in 40 CFR § 141.2 be included? (IAWC)

Response: The rest of the information in 40 CFR 141.2 is not part of a definition. It has been incorporated into the rule elsewhere.

Comment: In 327 IAC 8-2-1(47), the definition in the federal rule also includes the following text, "MRDGLs are nonenforceable health goals and do not reflect the benefit of the addition of chemical for control of waterborne microbial contaminants". (IAWC)

Response: The part of the federal definition you are referring to is describing enforceability. IDEM does not include that type of information in the definition section.

Comment: In 327 IAC 8-2-13(a), the added text should read "as certified by the commissioner", rather than "as certified by the Commissioner". In 327 IAC 8-2-6-3(1)(C) and (2), commissioner should be lower case. (IAWC)

Response: IDEM agrees. The language has been changed.

Comment: In 327 IAC 8-2-1-8(b)(5), is (D) necessary since IDEM does not grant variances or exemptions and does not have rules in place to grant them? (IAWC)

Response: IDEM agrees. 327 IAC 8-2-1-8(b)(5)(D) is not necessary. The language has been removed.

Comment: In 327 IAC 8-2-1-16, Table 16, Section 3 should also include 327 IAC 8-2-6-3(1)(B) and 327 IAC 8-2-6-3(2) in the MCL/MRDL/TT/AL Violations Citation Column and 327 IAC 8-2-6-4

in the Monitoring and Testing Procedures Violation Column. There should also be a section as follows:

Contaminant	MCL/MRDL/TT/AL Violations Citation	Monitoring and Testing Procedures Violations Citation
Interim Enhanced Surface Water Treatment Rule violations, other than violations resulting from single exceedance of maximum allowable turbidity level	327 IAC 8-2.6-1 through 327 IAC 8-2.6-3	327 IAC 8-2.6-2 327 IAC 8-2.6-4

Also in that table, section G should include the information in 40 CFR 141, Subpart Q, Appendix A. (IAWC)

Response: IDEM agrees. The language has been changed.

Comment: The information included in 327 IAC 8-2.1-17 should also be included in 327 IAC 8-2.1-6(c). The paragraphs labeled, "Add for public notification only" will not need to be included in 327 IAC 8-2.1-6(c). After the information is added to 327 IAC 8-2.1-6(c), the labels (Add for public notification only) can be removed from the references in 327 IAC 8-2.1-17. The contaminants added to 327 IAC 8-2.1-17 also need to be added to the tables in 327 IAC 8-2.1-6(a) and (b). (IAWC)

Response: The contaminants in 327 IAC 8-2.1-17 were added to the tables in 327 IAC 8-2.1-6(a) and 327 IAC 8-2.1-6(b). The information in 327 IAC 8-2.1-17 was not added to 327 IAC 8-2.1-6(c) because there is no alternate health effects language for the contaminants added to 327 IAC 8-2.1-17. 327 IAC 8-2.1-6(c) refers back to 327 IAC 8-2.1-17 and only lists specific language if it is different from the language in 327 IAC 8-2.1-17.

Comment: In 327 IAC 8-2.5-5(b), section (3) does not seem to pertain to the analytical methods in the rest of the section. Does it belong somewhere else? It may belong in 327 IAC 8-2.5-6(b)(2). (IAWC)

Response: IDEM thinks the language is most appropriate where it is placed.

Comment: In 327 IAC 8-2.5-5(c)(3), Indiana-American Water Company, Inc. recommends the following language: "Residual disinfectant concentration may be measured by a certified operator or other competent individual under the supervision of a certified operator." The current language does not allow people who are training to become operators and working under the direct supervision of an operator to measure residual disinfectant concentration. In 327 IAC 8-2.5-5(e), Indiana-American Water Company, Inc. recommends the following language: "Parameters measured under subsection (d) must be measured by a certified operator or other competent individual under the supervision of a certified operator." The current language does not allow people who are training to become operators and working under the direct supervision of an operator to measure alkalinity, pH, bromide, TOC, UV₂₅₄, or DOC. (IAWC)

Response: IDEM agrees. The language has been changed to include other parties approved by the commissioner.

Comment: In 327 IAC 8-2.5-6(b)(2)(A)(ii) and (b)(2)(B), the locations to be monitored are the same, could this be listed once, and then referenced? (IAWC)

Response: The locations are not necessarily the same.

Comment: In 327 IAC 8-2.5-6(c)(2), parts (C) and (D) should be subsets of part (B). (IAWC)

Response: IDEM agrees. The language has been changed.

Comment: In 327 IAC 8-2.5-6(f)(6)(C), “or if providing water to a consecutive system” should be clarified. This requirement only applies in the federal rule if the requirements of 40 CFR § 141.29 are met. (IAWC)

Response: IDEM agrees. The language has been removed.

Comment: In 327 IAC 8-2.5-7(c)(2)(A)(iii), the reference should be to sections 7 through 17 of 327 IAC 8-2.1, rather than sections 3 through 17. In 327 IAC 8-2.5-7(c)(2)(B)(ii), the reference should be to sections 7 through 17 of 327 IAC 8-2.1, rather than sections 3 through 17 of 327 IAC 8-2. (IAWC)

Response: IDEM agrees. The language has been changed.

Comment: In 327 IAC 8-2.5-9(a)(2)(C)(ii)(BB), can “a violation of the National Primary Drinking Water Regulations” be referenced in the state rule without either defining it or incorporating them by reference? What is this actually a violation of? (IAWC)

Response: The language has been removed.

Comment: In 327 IAC 8-2.5-9(b) and (c), references to 2 different “Step 2”’s is confusing? (IAWC)

Response: The Step 2’s in each respective subsection are completely independent of each other. The Steps referenced in subsection (b) are taken from federal language. The STEPS (all caps) referenced in subsection (c) are the Legislative Services Agency’s (LSA) style of writing out a calculation.

Comment: In 327 IAC 8-2.6-1(a), viruses should be their own reference, leaving the list as follows:

- (1) Giardia lamblia
- (2) Viruses
- (3) Heterotrophic plate count bacteria
- (4) Legionella
- (5) Cryptosporidium
- (6) Turbidity

(IAWC)

Response: IDEM agrees. The language has been changed.

Comment: In 327 IAC 8-2.6-2, are (a) and (b) necessary or could the federal regulation (40 CFR § 141.172) be incorporated by reference since all the dates are in the past? (IAWC)

Response: Subsections (a) and (b) are necessary and have been adopted into the LSA style language as has the rest of this rulemaking.

Comment: In 327 IAC 8-2.6-4(a), the phrase “subject to the requirements of this section” is redundant. (IAWC)

Response: IDEM agrees. The language has been removed.

Comment: In 327 IAC 8-2.6-5, in order to have the correct number of significant digits, in part (2), the references in (A) and (C) should be to one and zero-tenths (1.0) and the reference in (D) should be to two and zero-tenths (2.0). (IAWC)

Response: IDEM agrees. The language has been changed.

Comment: In 327 IAC 8-2.6-6(3), requiring recycle flow information “on forms provided by the department” would require all plant schematics and other information to be on IDEM forms. In addition, if that is what is intended, should the reference be “on forms provided by the commissioner” rather than the department? (IAWC)

Response: IDEM agrees. The language has been clarified to specify what information will be on the forms. The language will remain “on forms provided by the department for review and evaluation by the commissioner”.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On August 14, 2002, the water pollution control board conducted the first public hearing/board meeting concerning the development of amendments to 327 IAC 8-2 and 327 IAC 8-2.1 and new rules 327 IAC 8-2.5 and 327 IAC 8-2.6. No comments were made at the first hearing.

327 IAC 8-2-1
327 IAC 8-2-5
327 IAC 8-2-5.3
327 IAC 8-2-6
327 IAC 8-2-8.5
327 IAC 8-2-13
327 IAC 8-2-29
327 IAC 8-2-30
327 IAC 8-2-31
327 IAC 8-2-48

327 IAC 8-2.1-3
327 IAC 8-2.1-4
327 IAC 8-2.1-6
327 IAC 8-2.1-8
327 IAC 8-2.1-16
327 IAC 8-2.1-17
327 IAC 8-2.5
327 IAC 8-2.6

SECTION 1. 327 IAC 8-2-1, AS AMENDED AT 25 IR 1075, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-1 Definitions

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16

Affected: IC 13-11-2; IC 13-18

Sec. 1. In addition to the definitions contained in IC 13-11-2 and 327 IAC 1, the following definitions apply throughout this rule, **327 IAC 8-2.1, 327 IAC 8-2.5, and 327 IAC 8-2.6:**

- (1) “Act” means the Safe Drinking Water Act (42 U.S.C. 300f et seq.).
- (2) “Action level” means the concentration of lead or copper in water specified in section 36(c) of this rule which determines, in some cases, the treatment requirements contained in sections 36 through 47 of this rule, that a water system is required to complete.
- (3) “Adjustment program” means the addition of fluoride to drinking water by a public water system for the prevention of dental cavities.
- (4) “Administrator” means the administrator of the U.S. EPA.
- (5) “Best available technology” **or** “BAT” means best technology, treatment techniques, or other means which the commissioner finds are available, after examination for efficacy under field conditions, and not solely under laboratory conditions, and after taking cost into consideration. For the purpose of setting maximum contaminant levels for synthetic organic chemicals, any BAT must be at least as effective as granular activated carbon.
- (6) “Coagulation” means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into flocs.
- (7) “Commissioner” means the commissioner of the Indiana department of environmental management or the designated agent of the commissioner.
- (8) “Community water system” **or** “CWS” means a public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.
- (9) “Compliance cycle” means the nine (9) year calendar year cycle during which public water systems must monitor. Each compliance cycle consists of three (3) three-year compliance periods. The first calendar year cycle begins January 1, 1993, and ends December 31, 2001; the second begins January 1,

2002, and ends December 31, 2010; the third begins January 1, 2011, and ends December 31, 2019.

(10) “Compliance period” means a three (3) year calendar year period within a compliance cycle. Each compliance cycle has three (3) three-year compliance periods. Within the first compliance cycle, the first compliance period runs from January 1, 1993, to December 31, 1995; the second from January 1, 1996, to December 31, 1998; the third from January 1, 1999, to December 31, 2001. Within the second compliance cycle, the first compliance period runs from January 1, 2002, to December 31, 2004; the second from January 1, 2005, to December 31, 2007; and the third from January 1, 2008, to December 31, 2010. Within the third compliance cycle, the first compliance period runs from January 1, 2011, to December 31, 2013; the second from January 1, 2014, to December 31, 2016; and the third from January 1, 2017, to December 31, 2019.

(11) “Comprehensive performance evaluation” or “CPE” means a thorough review and analysis of a treatment plant’s performance-based capabilities and associated administrative, operation, and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant’s capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. For purposes of compliance with 327 IAC 8-2.6-1, the comprehensive performance evaluation must consist of at least the following components:

- (A) Assessment of plant performance.**
- (B) Evaluation of major unit processes.**
- (C) Identification and prioritization of performance limiting factors.**
- (D) Assessment of the applicability of comprehensive technical assistance.**
- (E) Preparation of a CPE report.**

~~(11)~~ **(12)** “Confluent growth” means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.

~~(12)~~ **(13)** “Contaminant” means any micro-organisms, chemicals, waste, physical substance, radiological substance, or any wastewater introduced or found in the drinking water.

~~(13)~~ **(14)** “Conventional filtration treatment” means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.

~~(14)~~ **(15)** “Corrosion inhibitor” means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

~~(15)~~ **(16)** “CT” or “CTcalc” is the product of residual disinfectant concentration (C) in milligrams per liter determined before or at the first customer and the corresponding disinfectant contact time (T) in minutes, such as $C \times T$. If a public water system applies disinfectants at more than one (1) point prior to the first customer, it must determine the CT of

each disinfectant sequence before or at the first customer to determine the total percent inactivation or total inactivation ratio. In determining the total inactivation ratio, the public water system must determine the residual disinfectant concentration of each disinfection sequence and corresponding contact time before any subsequent disinfection application point. $CT_{99.9}$ is the CT value required for ninety-nine and nine-tenths percent (99.9%) (3-log) inactivation of *Giardia lamblia* cysts. $CT_{99.9}$ for a variety of disinfectants and conditions appears in Tables 1.1-1.6, 2.1, and 3.1 of paragraph 141.74(b)(3)¹.

$$\frac{CT_{calc}}{CT_{99.9}}$$

is the inactivation ratio. The sum of the inactivation ratios or total inactivation ratio shown as:

$$\sum \frac{(CT_{calc})}{(CT_{99.9})}$$

is calculated by adding together the inactivation ratio for each disinfection sequence. A total inactivation ratio equal to or greater than one (1.0) is assumed to provide a 3-log inactivation of *Giardia lamblia* cysts.

~~(16)~~ **(17)** “Diatomaceous earth filtration” means a process resulting in substantial particulate removal in which:

- (A) a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum); and
- (B) while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.

~~(17)~~ **(18)** “Direct filtration” means a series of processes, including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.

~~(18)~~ **(19)** “Disinfectant” means any oxidant, including, but not limited to, chlorine, chlorine dioxide, chloramines, and ozone added to water in any part of the treatment or distribution process that is intended to kill or inactivate pathogenic micro-organisms.

~~(19)~~ **(20)** “Disinfectant contact time” (T in CT calculations) means the time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration (C) is measured. Where only one (1) C is measured, T is the time in minutes that it takes for water to move from the point of disinfectant application to a point before or at where C is measured. Where more than one (1) C is measured, T is:

- (A) for the first measurement of C, the time in minutes that it takes for water to move from the first or only point of disinfectant application to a point before or at the point where the first C is measured; and
- (B) for subsequent measurements of C, the time in minutes that it takes for water to move from the previous C mea-

surement point to the C measurement point for which the particular T is being calculated.

Disinfectant contact time in pipelines must be calculated based on plug flow by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe. Disinfectant contact time within mixing basins and storage reservoirs must be determined by tracer studies or an equivalent demonstration.

~~(20)~~ (21) "Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

(22) "Disinfection profile" means a summary of daily Giardia lamblia inactivation through a treatment plant.

~~(21)~~ (23) "Domestic or other nondistribution system plumbing problem" means a coliform contamination problem in a public water system with more than one (1) service connection that is limited to the specific service connection from which the coliform-positive sample was taken.

~~(22)~~ (24) "Dose equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements (ICRUM).

~~(23)~~ (25) "Drinking water violation" means violations of the maximum contaminant level (MCL), treatment technique (TT), monitoring requirements, and testing procedures in this rule. 327 IAC 8-2.1-16 identifies the tier assignment for each specific violation or situation requiring a public notice.

~~(24)~~ (26) "Effective corrosion inhibitor residual" means a concentration sufficient to form a passivating film on the interior walls of a pipe for the purpose of sections 36 through 47 of this rule only.

(27) "Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.

(28) "Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

(29) "Filter profile" means a graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.

~~(25)~~ (30) "Filtration" means a process for removing particulate matter from water by passage through porous media.

~~(26)~~ (31) "First draw sample" means a one (1) liter sample of tap water collected in accordance with section 37 of this rule, that has been standing in the plumbing pipes at least six (6) hours and is collected without flushing the tap.

~~(27)~~ (32) "Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

(33) "GAC10" means granular activated carbon filter beds with an empty-bed contact time of ten (10) minutes based on average daily flow and a carbon reactivation frequency of every one hundred eighty (180) days.

~~(28)~~ (34) "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

~~(29)~~ (35) "Gross beta particle activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

~~(30)~~ (36) "Ground water under the direct influence of surface water" means any water beneath the surface of the ground with:

- (A) significant occurrence of insects or other macro-organisms, algae, or large-diameter pathogens such as Giardia lamblia or, **for subpart H systems serving at least ten thousand (10,000) individuals only, Cryptosporidium; or**
- (B) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

Direct influence must be determined for individual sources in accordance with criteria established by the commissioner. The commissioner's determination of direct influence may be based on site-specific measurements of water quality and/or documentation of well construction characteristics and geology with field evaluation.

(37) "Haloacetic acids (five)" or "HAA5" means the sum of the concentrations in milligrams per liter of the haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid), rounded to two (2) significant figures after addition.

~~(31)~~ (38) "Halogen" means one (1) of the chemical elements chlorine, bromine, or iodine.

~~(32)~~ (39) "Initial compliance period" means January 1993 to December 1995, for the contaminants listed in sections 4 (other than arsenic, barium, cadmium, fluoride, lead, mercury, selenium, and silver), 5, and 5.4(a) (other than benzene, vinyl chloride, carbon tetrachloride, 1,2-dichloroethane, trichloroethylene, 1,1-dichloroethylene, 1,1,1-trichloroethane, and para-dichlorobenzene) of this rule.

~~(33)~~ (40) "Large water system" means a water system that serves more than fifty thousand (50,000) people for the purpose of sections 36 through 47 of this rule only.

~~(34)~~ (41) "Lead service line" means a service line made of lead which connects the water main to the building inlet and any lead pigtail, gooseneck, or other fitting which is connected to such lead line.

~~(35)~~ (42) "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

~~(36)~~ (43) "Manmade beta particle and photon emitters" means all radionuclides emitting beta particle and/or photons listed in "Maximum Permissible Body Burdens and Maximum

Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure”, NBS Handbook 69, as amended August 1973, U.S. Department of Commerce, except the daughter products of thorium-232, uranium-235, and uranium-238.

~~(37)~~ **(44)** “Maximum contaminant level (MCL)” means the maximum permissible level of a contaminant in water which is delivered to the free flowing outlet of the ultimate user of a public water system, except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition.

~~(38)~~ **(45)** “Maximum contaminant level goal (MCLG)” means the maximum level of a contaminant in drinking water at which no known or anticipated adverse effect on the health of persons would occur and which includes an adequate margin of safety. Maximum contaminant level goals are nonenforceable health goals.

(46) “Maximum residual disinfectant level” or “MRDL” means a level of a disinfectant added for water treatment that may not be exceeded at the consumer’s tap without an unacceptable possibility of adverse health effects.

(47) “Maximum residual disinfectant level goal” or “MRDLG” means the maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of individuals would occur, and which allows an adequate margin of safety.

~~(39)~~ **(48)** “Maximum total trihalomethane potential” or “MTP” means the maximum concentration of total trihalomethanes produced in a given water containing a disinfectant residual after seven (7) days at a temperature of twenty-five (25) degrees Celsius or above.

~~(40)~~ **(49)** “Medium size water system” means a water system that serves greater than three thousand three hundred (3,300) and less than or equal to fifty thousand (50,000) persons for the purpose of sections 36 through 47 of this rule only.

~~(41)~~ **(50)** “Near the first service connection” means at one (1) of the twenty percent (20%) of all service connections in the entire system that are nearest the water supply treatment facility, as measured by water transport time within the distribution system.

~~(42)~~ **(51)** “Noncommunity water system” means a public water system which has at least fifteen (15) service connections used by nonresidents or which regularly serves twenty-five (25) or more nonresident individuals daily for at least sixty (60) days per year.

~~(43)~~ **(52)** “Nontransient noncommunity water system” or “NTNCWS” means a public water system that is not a community water system which regularly serves the same twenty-five (25) or more persons at least six (6) months per year.

~~(44)~~ **(53)** “Optimal corrosion control treatment” means the corrosion control treatment that minimizes the lead and

copper concentrations at users’ taps while ensuring that the treatment does not cause the water system to violate any national primary drinking water regulations for the purpose of sections 36 through 47 of this rule only.

~~(45)~~ **(54)** “Performance evaluation sample” means a reference sample provided to a laboratory for the purpose of demonstrating that the laboratory can successfully analyze the sample within limits of performance specified by the administrator. The true value of the concentration of the reference material is unknown to the laboratory at the time of the analysis.

~~(46)~~ **(55)** “Picocuri (pCi)” means the quantity of radioactive material producing two and twenty-two hundredths (2.22) nuclear transformations per minute.

~~(47)~~ **(56)** “Point of disinfectant application” is the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water run-off.

~~(48)~~ **(57)** “Point-of-entry treatment device” or “POE” is a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in drinking water distributed throughout the house or building.

~~(49)~~ **(58)** “Point-of-use treatment device” or “POU” is a treatment device to a single tap used for the purpose of reducing contaminants in drinking water at that one (1) tap.

~~(50)~~ **(59)** “Primacy agency” is the department of environmental management where the department exercise primary enforcement responsibility as granted by EPA.

~~(51)~~ **(60)** “Public water system” means a public water supply for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals daily at least sixty (60) days out of the year. “Public water system” includes any collection, treatment, storage, and distribution facilities under control of the operator of such system, and used primarily in connection with such system and any collection or pretreatment storage facilities not under such control that are used primarily in connection with such system. A public water system is either a community water system or a noncommunity water system, as defined in subdivisions (8) and ~~(42)~~ **(51)**.

~~(52)~~ **(61)** “Rem” means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A millirem (mrem) is one-thousandth (1/1,000) of a rem.

~~(53)~~ **(62)** “Repeat compliance period” means any subsequent compliance period after the initial compliance period.

~~(54)~~ **(63)** “Residual disinfectant concentration”(C in CT calculations) means the concentration of disinfectant measured in milligrams per liter in a representative sample of water.

~~(55)~~ **(64)** “Sanitary survey” means an on-site inspection of the water source, facilities, equipment, construction, and opera-

tion and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, construction, and operation and maintenance for producing and distributing safe drinking water.

~~(56)~~ **(65)** “Sedimentation” means a process for removal of solids before filtration by gravity or separation.

~~(57)~~ **(66)** “Service line sample” means a one (1) liter sample of water collected in accordance with section 37(b)(3) of this rule that has been standing at least six (6) hours in a service line.

~~(58)~~ **(67)** “Single family structure” means a building constructed as a single family residence that is currently being used as either a residence or a place of business for the purpose of sections 36 through 47 of this rule only.

~~(59)~~ **(68)** “Slow sand filtration” means a process involving passage of raw water through a bed of sand at low velocity (generally less than four-tenths (0.4) meter per hour or forty-five (45) to one hundred fifty (150) gallons per day per square foot) resulting in substantial particulate removal by physical and biological mechanisms.

~~(60)~~ **(69)** “Small water system” means a water system that serves three thousand three hundred (3,300) persons or fewer for the purpose of sections 36 through 47 of this rule only.

~~(61)~~ **(70)** “Standard sample” means the aliquot of finished drinking water that is examined for the presence of coliform bacteria.

(71) “Subpart H system” means a public water system using surface water or ground water under the direct influence of surface water as a source that is subject to the requirements of 327 IAC 8-2.6-1.

~~(62)~~ **(72)** “Supplier of water” means any person who owns and/or operates a public water system.

~~(63)~~ **(73)** “Surface water” means all water occurring on the surface of the ground, including water in a stream, natural and artificial lakes, ponds, swales, marshes, and diffused surface water.

(74) “SUVA” means specific ultraviolet absorption at two hundred fifty-four (254) nanometers, an indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample’s ultraviolet absorption at a wavelength of two hundred fifty-four (254) nanometers (UV₂₅₄) (in m⁻¹) by its concentration of dissolved organic carbon (DOC) (in milligrams per liter).

~~(64)~~ **(75)** “System with a single service connection” means a public water system which supplies drinking water to consumers via a single service line.

~~(65)~~ **(76)** “Too numerous to count” means that the total number of bacterial colonies exceeds two hundred (200) on a forty-seven (47) millimeter diameter membrane filter used for coliform detection.

(77) “Total organic carbon” or “TOC” means total organic carbon in milligrams per liter, measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic

carbon to carbon dioxide, rounded to two (2) significant figures.

~~(66)~~ **(78)** “Total trihalomethanes” or “TTHM” means the sum of the concentration in milligrams per liter of the trihalomethane compounds:

- (A) trichloromethane (chloroform);
- (B) dibromochloromethane;
- (C) bromodichloromethane; and
- (D) tribromomethane (bromoform);

rounded to two (2) significant figures.

~~(67)~~ **(79)** “Transient noncommunity water system” or “TWS” means a noncommunity water system that does not regularly serve at least twenty-five (25) of the same persons over six (6) months per year.

~~(68)~~ **(80)** “Trihalomethane” or “THM” means one (1) of the family of organic compounds, named as derivatives of methane, wherein three (3) of the four (4) hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

(81) “Uncovered finished water storage facility” means a tank, reservoir, or other facility open to the atmosphere that is used to store water that will undergo no further treatment except residual disinfection.

~~(69)~~ **(82)** “U.S. EPA” or “EPA” means the United States Environmental Protection Agency.

~~(70)~~ **(83)** “Virus” means a virus of fecal origin which is infectious to humans by waterborne transmission.

~~(71)~~ **(84)** “Waterborne disease outbreak” means the significant occurrence of acute infectious illness epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment as determined by the commissioner.

¹Federal Register, Part II, 40 CFR 141, June 29, 1989, Volume 54, Number 124, pages 27532 through 27534. (*Water Pollution Control Board; 327 IAC 8-2-1; filed Sep 24, 1987, 3:00 p.m.: 11 IR 705; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1003; errata filed Jan 9, 1991, 2:30 p.m.: 14 IR 1070; errata filed Aug 6, 1991, 3:45 p.m.: 14 IR 2258; filed Apr 12, 1993, 11:00 a.m.: 16 IR 2151; filed Aug 24, 1994, 8:15 a.m.: 18 IR 19; errata filed Oct 11, 1994, 2:45 p.m.: 18 IR 531; filed Oct 24, 1997, 4:30 p.m.: 21 IR 932; filed Mar 6, 2000, 7:56 a.m.: 23 IR 1623; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1075*)

SECTION 2. 327 IAC 8-2-5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-5 Organic chemicals other than volatile compounds; maximum contaminant levels

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 5. (a) The MCLs for the following synthetic organic chemicals apply to all community water systems and nontransient noncommunity water systems, except as provided in subsection (c) for total trihalomethanes:

Proposed Rules

Contaminant	Level in Milligrams Per Liter
Total trihalomethanes (the sum of the concentrations of bromodichloromethane, dibromochloromethane, tribromomethane (bromoform), and trichloromethane (chloroform))	0.10

CAS No.	Contaminant	MCL (mg/l)
15972-60-8	Alachlor	0.002
1912-24-9	Atrazine	0.003
50-32-8	Benzo[a]pyrene	0.0002
1563-66-2	Carbofuran	0.04
57-74-9	Chlordane	0.002
75-99-0	Dalapon	0.2
96-12-8	1,2-dibromo-3-chloropropane (DBCP)	0.0002
103-23-1	Di(2-ethylhexyl)adipate	0.4
117-81-7	Di(2-ethylhexyl)phthalate	0.006
88-85-7	Dinoseb	0.007
85-00-7	Diquat	0.02
94-75-7	2,4-D	0.07
145-73-3	Endothall	0.1
72-20-8	Endrin	0.002
106-93-4	Ethylene dibromide	0.00005
1071-53-6	Glyphosate	0.7
76-44-8	Heptachlor	0.0004
1024-57-3	Heptachlor epoxide	0.0002
118-74-1	Hexachlorobenzene	0.001
77-47-4	Hexachlorocyclopentadiene	0.05
58-89-9	Lindane	0.0002
72-43-5	Methoxychlor	0.04
23135-22-0	Oxamyl (vydate)	0.2
1918-02-1	Picloram	0.5
1336-36-3	Polychlorinated biphenyls	0.0005
87-86-5	Pentachlorophenol	0.001
122-34-9	Simazine	0.004
8001-35-2	Toxaphene	0.003
1746-01-6	2,3,7,8-TCDD (dioxin)	3 x 10 ⁻⁸
93-72-1	2,4,5-TP	0.05

(b) For the synthetic organic chemicals listed in this section other than total trihalomethanes, monitoring frequency is specified in section 5.1 of this rule, and analytical methods are specified in section 5.2 of this rule.

(c) The MCL of one-tenth (0.10) milligram per liter for total trihalomethanes listed in this section applies only to as follows:

(1) A subpart H community water systems system which serve serves a population of ten thousand (10,000) or more individuals and which add a disinfectant (oxidant) to the water in any part of the drinking water treatment process until December 31, 2001.

(2) A CWS that uses only ground water not under the direct influence of surface water and serve a population of ten thousand (10,000) or more individuals until December 31, 2003.

Compliance with the MCL for total trihalomethanes is calculated under section 5.3 of this rule. After December 31, 2003, this subsection is no longer applicable.

(d) The commissioner hereby identifies, as indicated in the following table, granular activated carbon (GAC), packed tower aeration (PTA), or oxidation (OX) as the best technology, treatment technique, or other means available for achieving compliance with the MCL for synthetic organic contaminants identified in subsection (a):

BAT for Synthetic Organic Contaminants

Listed in Subsection (a)

CAS No.	Contaminant	GAC	PTA	OX
15972-60-8	Alachlor	X		
1912-24-9	Atrazine	X		
50-32-8	Benzo[a]pyrene	X		
1563-66-2	Carbofuran	X		
57-74-9	Chlordane	X		
94-75-7	2,4-D	X		
75-99-0	Dalapon	X		
96-12-8	1,2-dibromo-3-chloropropane (DBCP)	X	X	
103-23-1	Di(2-ethylhexyl)adipate	X	X	
117-81-7	Di(2-ethylhexyl)phthalate	X		
88-85-7	Dinoseb	X		
85-00-7	Diquat	X		
145-73-3	Endothall	X		
72-20-8	Endrin	X		
106-93-4	Ethylene dibromide (EDB)	X	X	
1071-53-6	Glyphosate			X
76-44-8	Heptachlor	X		
1024-57-3	Heptachlor epoxide	X		
118-74-1	Hexachlorobenzene	X		
77-47-3	Hexachlorocyclopentadiene	X	X	
58-89-9	Lindane	X		
72-43-5	Methoxychlor	X		
23135-22-0	Oxamyl (vydate)	X		
1918-02-1	Picloram	X		
1336-36-3	Polychlorinated biphenyls (PCBs)	X		

87-86-5	Pentachlorophenol	X	
93-72-1	2,4,5-TP (silvex)	X	
122-34-9	Simazine	X	
1746-01-6	2,3,7,8-TCDD (dioxin)	X	
8001-35-2	Toxaphene	X	X

(Water Pollution Control Board; 327 IAC 8-2-5; filed Sep 24, 1987, 3:00 p.m.: 11 IR 706; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1009; errata filed Aug 6, 1991, 3:45 p.m.: 14 IR 2258; filed Aug 24, 1994, 8:15 a.m.: 18 IR 32; errata filed Oct 11, 1994, 2:45 p.m.: 18 IR 531; filed Aug 25, 1997, 8:00 a.m.: 21 IR 43)

SECTION 3. 327 IAC 8-2-5.3, AS AMENDED AT 25 IR 1086, SECTION 6, IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-5.3 Collection of samples for total trihalomethanes testing; community water systems

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-11-2; IC 13-14-8; IC 13-18-1; IC 13-18-2

Sec. 5.3. (a) To determine compliance with section 5 of this rule, each community water system which serves ten thousand (10,000) or more individuals and which adds a disinfectant (oxidant) to the water in any part of the drinking water treatment process shall collect and analyze samples for total trihalomethanes (TTHM) in accordance with this section. The minimum number of samples required to be taken by the system shall be based on the number of treatment plants used by the system, except that multiple wells drawing raw water from a single aquifer may, with the commissioner's approval, be considered one (1) treatment plant for determining the minimum number of samples. All samples taken within an established frequency shall be collected within a twenty-four (24) hour period.

(b) The requirements of subsection (a) apply as follows:

(1) Community water systems which utilize surface water sources in whole or in part, and community water systems which utilize only ground water sources and which have not been determined by the commissioner to qualify for the monitoring requirements of subsection (c) shall analyze for TTHM at quarterly intervals on at least four (4) water samples for each treatment plant used by the system. At least twenty-five percent (25%) of the samples shall be taken at locations within the distribution system reflecting the maximum residence time of the water in the system. The remaining seventy-five percent (75%) shall be taken at representative locations in the distribution system, taking into account number of persons served, different sources of water, and different treatment methods employed. The results of all analyses per quarter shall be arithmetically averaged and reported to the commissioner within thirty (30) days of the system's receipt of such results. All samples collected shall be used in the computation of the average, unless the analytical results are invalidated for technical reasons. Sampling and

analyses shall be conducted in accordance with the methods listed in subsection (e).

(2) Upon the written request of a community water system, the monitoring frequency required by subdivision (1) may be reduced by the commissioner to a minimum of one (1) sample analyzed for TTHM per quarter taken at a point in the distribution system reflecting the maximum residence time of the water in the system. Upon a written determination by the commissioner that the data from at least one (1) year of monitoring in accordance with subdivision (1) and local conditions demonstrate that TTHM concentrations will be consistently below the MCL.

(3) If, at any time during which the reduced monitoring frequency prescribed under this section applies, the results from any analysis exceed ten-hundredths (0.10) milligram per liter of TTHM and such results are confirmed by at least one (1) check sample taken promptly after such results are received, or if the system makes any significant change to its source of water or treatment program, the system shall immediately begin monitoring in accordance with the requirements of subdivision (1) which monitoring shall continue for at least one (1) year before the frequency may be reduced again. At the discretion of the commissioner, a system's monitoring frequency shall be increased above the minimum in those cases where it is necessary to detect variations of TTHM levels within the distribution system.

(c) Monitoring frequency required by this section may only be reduced as follows:

(1) Upon written request to the commissioner, a community water system utilizing only ground water sources may seek to have the monitoring frequency required by subsection (a) reduced to a minimum of one (1) sample for maximum TTHM potential per year for each treatment plant used by the system taken at a point in the distribution system reflecting maximum residence time of the water in the system. The system shall submit, to the commissioner, the results of at least one (1) sample analyzed for maximum TTHM potential using the procedure specified in subsection (g). A sample must be analyzed from each treatment plant used by the system and be taken at a point in the distribution system reflecting the maximum residence time of the water in the system. The system's monitoring frequency may only be reduced upon a written determination by the commissioner that, based upon the data submitted by the system, the system has a maximum TTHM potential of less than ten-hundredths (0.10) milligram per liter and that, based upon an assessment of the local condition of the system, the system is not likely to approach or exceed the MCL for total TTHMs. The results of all analyses shall be reported to the commissioner within thirty (30) days of the system's receipt of such results. All samples collected shall be used for determining whether the system must comply with the monitoring requirements of subsection (a) unless the analytical results are invalidated for technical reasons. Sampling and analyses shall be conducted

in accordance with the methods listed in subsection (e).

(2) If, at any time during which the reduced monitoring frequency prescribed under subdivision (1) applies, the results from any analysis taken by the system for maximum TTHM potential are equal to or greater than ten-hundredths (0.10) milligram per liter, and such results are confirmed by at least one (1) check sample taken promptly after such results are received, the system shall immediately begin monitoring in accordance with the requirements of subsection (b) and such monitoring shall continue for at least one (1) year before the frequency may be reduced again. In the event of any significant change to the system's source of water or treatment program, the system shall immediately analyze an additional sample for maximum TTHM potential taken at a point in the distribution system reflecting maximum residence time of the water in the system for the purpose of determining whether the system must comply with monitoring requirements of subsection (b). At the discretion of the commissioner, monitoring frequencies may and should be increased above the minimum in those cases where this is necessary to detect variation of TTHM levels within the distribution system.

(d) Compliance with section 5 of this rule for TTHM shall be determined based on a running annual average of quarterly samples collected by the system as prescribed in subsection (b)(1) or (b)(2). If the average of samples covering any four (4) consecutive quarterly periods exceeds the MCL, the supplier of water shall report to the commissioner under section 13 of this rule and notify the public under 327 IAC 8-2.1-7 through 327 IAC 8-2.1-16. Monitoring after public notification shall be at a frequency designated by the commissioner and shall continue until a monitoring schedule as a condition to an enforcement action shall become effective.

(e) Samples for TTHM shall be dechlorinated upon collection to prevent further production of trihalomethanes according to the procedures described in the methods, except acidification is not required if only TTHMs or THMs are to be determined. Samples for maximum TTHM potential should not be dechlorinated and should be held for seven (7) days at twenty-five (25) degrees Celsius or above prior to analysis. Analyses made under this section shall be conducted by one (1) of the following U.S. EPA approved methods:

- (1) Method 502.2, Rev 2.1*.
- (2) Method 524.2*.
- (3) Method 551.1*.

(f) Before a community water system makes any significant modifications to its existing treatment process for the purpose of achieving compliance with the MCL established in section 5(a) of this rule, such system must submit and obtain the commissioner's approval of a detailed plan setting forth its proposed modification and those safeguards that it will implement to ensure that the bacteriological quality of the drinking

water served by such system will not be adversely affected by such modification. Each system shall comply with the provisions set forth in the approved plan. At a minimum, a plan approved by the commissioner shall require the system modifying its disinfection practice to do the following:

- (1) Evaluate the water system for sanitary defects and evaluate the source water for biological quality.
- (2) Evaluate its existing treatment practices and consider improvements that will minimize disinfectant demand and optimize finished water quality throughout the distribution system.
- (3) Provide baseline water quality survey data of the distribution system. Such data should include the results from monitoring for coliform and fecal coliform bacterial, fecal streptococci, standard plate counts at thirty-five (35) degrees Celsius and twenty (20) degrees Celsius, phosphate, ammonia nitrogen, and total organic carbon. Virus studies should be required where source waters are heavily contaminated with sewage effluent.
- (4) Conduct additional monitoring to assure continued maintenance of optimal biological quality in finished water, for example, when chloramines are introduced as disinfectants or when prechlorination is being discontinued. Additional monitoring may also be required by the commissioner for chlorate, chlorite, and chlorine dioxide when chlorine dioxide is used. Standard plate count analysis may also be required by the commissioner as appropriate before and after any modifications.
- (5) Consider inclusion in the plan provisions to maintain an active disinfectant residual throughout the distribution system at all times during and after modification.

(g) The water sample for determination of maximum trihalomethane potential is taken from a point in the distribution system that reflects maximum residence time. Procedures for sample collection and handling are given in the methods. No reducing agent is added to quench the chemical reaction producing THMs at the time of sample collection. The intent is to permit the levels of THM precursors to be depleted and the concentration of THMs to be maximized for the supply to be tested. Four (4) experimental parameters affecting maximum THM production are pH, temperature, reaction time, and the presence of a disinfectant residual. These parameters are dealt with as follows:

- (1) Measure the disinfectant residual at the selected sampling point. Proceed only if a measurable disinfectant residual is present.
- (2) Collect triplicate forty (40) milliliter water samples at the pH prevailing at the time of sampling and prepare a method blank according to the methods.
- (3) Seal and store these samples together for seven (7) days at twenty-five (25) degrees Celsius or above.
- (4) After this time period, open one (1) of the sample containers and check for disinfectant residual. Absence of a disinfectant residual invalidates the sample for further analysis. Once

a disinfectant residual has been demonstrated, open another of the sealed samples and determine total THM concentration using a method specified in subsection (e).

(h) The requirements in subsections (a) through (g) apply to each Subpart H CWS that serves a population of ten thousand (10,000) or more individuals until December 31, 2001. The requirements in subsections (a) through (g) apply to each CWS that uses only ground water not under the direct influence of surface water that add a disinfectant (oxidant) in any part of the treatment process and serves a population of ten thousand (10,000) or more individuals until December 31, 2003. After the above dates expire, the requirements of 327 IAC 8-2.5 apply to these systems.

*The methods referenced in this section may be obtained as follows:

(1) Method 502.2, Rev 2.1 may be found in "Methods for the Determination of Organic Compounds in Drinking Water, Supplement III", EPA/600/R-95-131, August 1995, available from NTIS, PB95-261616, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, (800) 553-6847.

(2) Method 551.1 may be found in "Methods for the Determination of Organic Compounds in Drinking Water-Supplement III", EPA/600/R-95-131, August 1995, available from NTIS, PB95-261616, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, (800) 553-6847.

(3) Method 524.2 may be found in "Methods for the Determination of Organic Compounds in Drinking Water-Supplement II", EPA-600/R-92-129, August 1992, available from NTIS, PB92-207703, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, (800) 553-6847.

These methods are available for copying at the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 8-2-5.3; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1011; filed Aug 24, 1994, 8:15 a.m.: 18 IR 37; errata filed Oct 11, 1994, 2:45 p.m.: 18 IR 531; filed Aug 25, 1997, 8:00 a.m.: 21 IR 49; errata filed Dec 10, 1997, 3:45 p.m.: 21 IR 1348; filed Jul 23, 2001, 1:02 p.m.: 24 IR 3958; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1086*)

SECTION 4. 327 IAC 8-2-8.5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-8.5 Requirement for filtration and disinfection

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2

Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 8.5. (a) Effective June 29, 1993, a public water system that uses a surface water source must provide filtration in accordance with this section.

(b) A public water system that uses a ground water source under the direct influence of surface water shall provide filtration in accordance with this section beginning eighteen (18) months after the commissioner determines that it is under the direct influence of surface water from the date specified in section 8.2 of this rule.

(c) A public water system that uses a surface water source or a ground water source under the direct influence of surface water must provide treatment consisting of both disinfection, as specified in section 8.6 of this rule and filtration treatment. Filtration treatment shall be done by one (1) of the following techniques, and the turbidity level of representative samples of a system's filtered water, regardless of filtration technique used, shall at no time exceed five (5) nephelometric turbidity units (NTU) in any given sample, measured as specified in section 8.7 of this rule:

(1) For systems using conventional filtration or direct filtration, the turbidity level of representative samples of a system's filtered water must be less than or equal to one-half (0.5) NTU in at least ninety-five percent (95%) of the total number of measurements taken each month, measured as specified in sections 8.7(4) and 8.8(b) of this rule, except that if the commissioner determines that the system is capable of achieving at least ninety-nine and nine-tenths percent (99.9%) removal and/or inactivation of *Giardia lamblia* cysts at some turbidity level higher than one-half (0.5) NTU in at least ninety-five percent (95%) of the total number of measurements taken each month, the commissioner may substitute this higher turbidity limit for that system. However, in no case may the commissioner approve a turbidity limit that allows more than one (1) NTU in more than five percent (5%) of the samples taken each month, measured as specified in sections 8.7(4) and 8.8(b) of this rule. **Upon the effective date of this rule, systems serving a population of at least ten thousand (10,000) individuals shall meet the turbidity requirements in 327 IAC 8-2.6-3.**

(2) For systems using slow sand filtration, the turbidity level of representative samples of a system's filtered water must be less than or equal to one (1) NTU in at least ninety-five percent (95%) of the measurements taken each month, measured as specified in sections 8.7(4) and 8.8(b) of this rule, except where the commissioner determines that there is no significant interference with disinfection at a higher turbidity level.

(3) For systems using diatomaceous earth filtration, the turbidity level of representative samples of a public water system's filtered water must be less than or equal to one (1) NTU in at least ninety-five percent (95%) of the measurements taken each month, measured as specified in sections 8.7(4) and 8.8(b) of this rule.

(4) A public water system may use a filtration technology not listed in this subsection if it demonstrates to the commissioner, using pilot plant studies or other means, that the alternative filtration technology, in combination with disin-

fection treatment that meets the requirements of section 8.6 of this rule, consistently achieves ninety-nine and nine-tenths percent (99.9%) removal and/or inactivation of *Giardia lamblia* cysts and ninety-nine and ninety-nine hundredths percent (99.99%) removal and/or inactivation of viruses. For a system that makes this demonstration, the requirements of this subsection apply. **Upon the effective date of this rule, systems serving a population of at least ten thousand (10,000) individuals shall meet the requirements for other filtration technologies in 327 IAC 8-2.6-3.**

(d) During plant operation, each public water system subject to this section shall be operated only by personnel who have been certified by the commissioner under 327 IAC 8-11 through 327 IAC 8-12.

(e) In addition to complying with requirements in this section, systems serving a population of at least ten thousand (10,000) individuals shall also comply with the requirements in 327 IAC 8-2.6-1. (*Water Pollution Control Board; 327 IAC 8-2-8.5; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1024; errata filed Apr 5, 1991, 3:30 p.m.: 14 IR 1626; errata, 14 IR 1730; filed Apr 12, 1993, 11:00 a.m.: 16 IR 2160*)

SECTION 5. 327 IAC 8-2-13, AS AMENDED AT 25 IR 1096, SECTION 11, IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-13 Reporting requirements; test results and failure to comply

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 13. (a) Except where a shorter period is specified in this rule, the supplier of water or the certified laboratory, **as certified by the commissioner**, provided the supplier of water has granted permission in writing to the laboratory using forms provided by the commissioner, and that permission is on file with the commissioner, shall report to the commissioner the results of any test measurement or analysis required by this rule within:

- (1) the first ten (10) days following the month in which the result is received; or
- (2) the first ten (10) days following the end of the required monitoring period as stipulated by the commissioner, whichever is shorter.

(b) The supplier of water or the certified laboratory, **as certified by the commissioner**, provided the supplier of water has granted permission in writing to the laboratory using forms provided by the commissioner, and that permission is on file with the commissioner, shall report to the commissioner within forty-eight (48) hours of completion of laboratory analysis the failure to comply with any MCL and any other requirement set forth in this rule by telephone or the methods specified in subsection (e). If notification is made by telephone, the results

must follow using one (1) of the methods specified in subsection (e) within forty-eight (48) hours of the telephone notification.

(c) The supplier of water or the certified laboratory, **as certified by the commissioner**, provided the supplier of water has granted permission in writing to the laboratory using forms provided by the commissioner, and that permission is on file with the commissioner, shall report to the commissioner within (48) hours of completion of laboratory analysis any positive total coliform results by telephone or the methods specified in subsection (e). If notification is made by telephone, the results must follow using one (1) of the methods specified in subsection (e) within forty-eight (48) hours of the telephone notification.

(d) The supplier of water, within ten (10) days of completing the public notification required by 327 IAC 8-2.1-7 through 327 IAC 8-2.1-16, for the initial public notice and any repeat notices, shall submit to the commissioner a certification that it has fully complied with the public notification regulations. The public water system must include with this certification a representative copy of each type of notice distributed, published, posted, or made available to the persons served by the system or to the media.

(e) The submittal of the information required under this section shall be submitted in one (1) of the following manners:

- (1) Mail.
- (2) Facsimile.
- (3) Electronic mail.
- (4) Hand delivery.
- (5) Other means determined by the commissioner to provide the degree of confidentiality, reliability, convenience, and security appropriate to the information to be submitted.

(*Water Pollution Control Board; 327 IAC 8-2-13; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1030; filed Jul 23, 2001, 1:02 p.m.: 24 IR 3974; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1096; errata filed Feb 22, 2002, 2:01 p.m.: 25 IR 2254*)

SECTION 6. 327 IAC 8-2-30 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-30 Maximum contaminant level goals; organic compounds

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2
Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 30. (a) MCLGs are zero (0) for the following organic compounds:

- (1) Benzene.
- (2) Vinyl chloride.
- (3) Carbon tetrachloride.
- (4) 1,2-dichloroethane.
- (5) Trichloroethylene.
- (6) Acrylamide.

Proposed Rules

- (7) Alachlor.
- (8) Chlordane.
- (9) Dibromochloropropane.
- (10) 1,2-dichloropropane.
- (11) Epichlorohydrin.
- (12) Ethylene dibromide.
- (13) Heptachlor.
- (14) Heptachlor epoxide.
- (15) Pentachlorophenol.
- (16) Polychlorinated biphenyls (PCBs).
- (17) Tetrachloroethylene.
- (18) Toxaphene.
- (19) Benzo[a]pyrene.
- (20) Dichloromethane.
- (21) Di(2-ethylhexyl)phthalate.
- (22) Hexachlorobenzene.
- (23) 2,3,7,8-TCDD (dioxin).

(b) MCLGs for the following organic compounds are as follows:

<u>Contaminant</u>	<u>MCLG in Milligrams Per Liter</u>
1,1-dichloroethylene	0.007
1,1,1-trichloroethane	0.20
para-dichlorobenzene	0.075
Aldicarb	0.001
Aldicarb sulfoxide	0.001
Aldicarb sulfone	0.001
Atrazine	0.003
Carbofuran	0.04
Ortho-dichlorobenzene	0.6
cis-1,2-dichloroethylene	0.07
trans-1,2-dichloroethylene	0.1
2,4-D	0.07
Ethylbenzene	0.7
Lindane	0.0002
Methoxychlor	0.04
Monochlorobenzene	0.1
Styrene	0.1
Toluene	1
2,4,5-TP	0.05
Xylenes	10
Dalapon	0.2
Di(2-ethylhexyl)adipate	0.4
Dinoseb	0.007
Diquat	0.02
Endothall	0.1
Endrin	0.002
Glyphosate	0.7
Hexachlorocyclopentadiene	0.05
Oxamyl (vydate)	0.2

Picloram	0.5
Simazine	0.004
1,2,4-trichlorobenzene	0.07
1,1,2-trichloroethane	0.003

(c) MCLGs for the following disinfection byproducts are as follows:

<u>Disinfection Byproduct</u>	<u>MCLG (mg/L)</u>
Bromodichloromethane	0
Bromoform	0
Bromate	0
Dichloroacetic acid	0
Trichloroacetic acid	0.3
Chlorite	0.8
Dibromochloromethane	0.06

(Water Pollution Control Board; 327 IAC 8-2-30; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1047; filed Aug 24, 1994, 8:15 a.m.: 18 IR 66)

SECTION 7. 327 IAC 8-2-31 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-31 Maximum contaminant level goals; microbiological contaminants

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2
Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 31. Maximum contaminant level goals (MCLGs) are zero (0) for the following microbiological contaminants:

- (1) Giardia lamblia.
- (2) Viruses.
- (3) Legionella.
- (4) Total coliforms (including fecal coliforms and Escherichia coli).

(5) Cryptosporidium.

(Water Pollution Control Board; 327 IAC 8-2-31; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1047)

SECTION 8. 327 IAC 8-2-48 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-2-48 Monitoring of consecutive public water systems

Authority: IC 13-13-5-1; IC 13-14-8-7; IC 13-14-9; IC 13-18-3-2; IC 13-18-16-7
Affected: IC 13-11-2; IC 13-18-1; IC 13-18-2

Sec. 48. When a public water system supplies water to one (1) or more other public water systems, the commissioner may modify the monitoring requirements imposed by this article to the extent that the interconnection of the systems justifies treating them as a single system for monitoring purposes. Any modified monitoring shall be conducted pursuant to a schedule specified by the commissioner and concurred by the administrator of the U.S. EPA. (Water Pollution Control Board; 327 IAC 8-2-48)

SECTION 9. 327 IAC 8-2.1-3, AS AMENDED AT 25 IR 1098, SECTION 14, IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.1-3 Content of the reports

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7;
IC 13-18-16-9

Affected: IC 13-18-16

Sec. 3. (a) A community water system shall provide to its customers an annual report that contains the information specified in this section and section 4 of this rule.

(b) The report must contain information on the source of the water delivered, including the following:

(1) The source or sources of water delivered by the community water system by including information on:

(A) the type of water, such as surface water or ground water; and

(B) the commonly used name, if any, and location of the body or bodies of water.

(2) If a source water assessment has been completed, the report must notify the consumers of the availability of this information and the means to obtain it. In addition, systems are encouraged to highlight in the report significant sources of contamination in the source water area if they have readily available information. Where a system has received a source water assessment from the commissioner, the report must include a brief summary of the system's susceptibility to potential sources of contamination, using language provided by the commissioner or written by the operator.

(c) The report must include the following definitions:

(1) "Maximum contaminant level goal" or "MCLG" means the level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

(2) "Maximum contaminant level" or "MCL" means the highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible using the best available treatment technology.

(d) A report that contains data on contaminants that the department or EPA regulates and uses any of the following terms must include definitions, as applicable, of the terms used:

(1) "Treatment technique" means a required process intended to reduce the level of a contaminant in drinking water.

(2) "Action level" means the concentration of a contaminant that, if exceeded, triggers treatment or other requirements that a water system shall follow.

(e) A report must include the information specified in this subsection for the following contaminants subject to mandatory monitoring, other than *Cryptosporidium*:

(1) Contaminants subject to an MCL, action level, or treatment technique, hereafter referred to as regulated contaminants.

(2) Disinfection byproducts or microbial contaminants for which monitoring is required by 40 CFR 141.142* and 40 CFR 141.143*, except as provided in subsection (e)(1), and that are detected in the finished water.

(3) The data relating to these contaminants must be displayed in one (1) table or in several adjacent tables. Any additional monitoring results that a community water system chooses to include in its report must be displayed separately.

(4) The data must be derived from data collected to comply with EPA and department monitoring and analytical requirements during calendar year 1998 for the first report and subsequent calendar years thereafter, except the following:

(A) Where a system is allowed to monitor for regulated contaminants less often than once a year, the table or tables must include the date and results of the most recent sampling, and the report must include a brief statement indicating that the data presented in the report are from the most recent testing done in accordance with the regulations. No data older than five (5) years need be included.

(B) Results of monitoring in compliance with 40 CFR 141.142* and 40 CFR 141.143* need only be included for five (5) years from the date of the last sample or until any of the detected contaminants becomes regulated and subject to routine monitoring requirements, whichever comes first.

(5) For detected regulated contaminants listed in section 6(a) of this rule, the table or tables must contain the following information:

(A) The MCL for that contaminant expressed as a number equal to or greater than one and zero tenths (1.0), as listed in section 6(a) of this rule.

(B) The MCLG for that contaminant expressed in the same units as the MCL.

(C) If there is no MCL for a detected contaminant, the table must indicate that there is a treatment technique, or specify the action level, applicable to that contaminant, and the report shall include the definitions for treatment technique or action level, or both, as appropriate, specified in subsection (c)(4).

(D) For contaminants subject to an MCL, except turbidity and total coliforms, the highest contaminant level used to determine compliance with this rule and the range of detected levels as follows:

(i) When compliance with the MCL is determined annually or less frequently, the highest detected level at any sampling point and the range of detected levels expressed in the same units as the MCL.

(ii) When compliance with the MCL is determined by calculating a running annual average of all samples taken at a sampling point, the highest average of any of the sampling points and the range of all sampling points expressed in the same units as the MCL.

(iii) When compliance with the MCL is determined on a system-wide basis by calculating a running annual average of all samples at all sampling points, the average and range of detection expressed in the same units as the MCL.

(E) When turbidity is reported pursuant to 327 IAC 8-2-8.8 or 327 IAC 8-2.6-3, the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in 327 IAC 8-2-8.8 or 327 IAC 8-2.6-3 for the filtration technology being used. The report must include an explanation of the reasons for measuring turbidity.

(F) For lead and copper, the ninetieth percentile value of the most recent round of sampling and the number of sampling sites exceeding the action level.

(G) For total coliform, the highest monthly:

- (i) number of positive samples for systems collecting fewer than forty (40) samples per month; or
- (ii) percentage of positive samples for systems collecting at least forty (40) samples per month.

(H) For fecal coliform, the total number of positive samples.

(I) The likely source or sources of detected contaminants to the best of the operator's knowledge. Specific information regarding contaminants may be available in sanitary surveys and source water assessments, and must be used when available to the operator. If the operator lacks specific information on the likely source, the report must include one (1) or more of the typical sources for that contaminant listed in section 6(b) of this rule that are most applicable to the system.

(6) If a community water system distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources:

(A) the table must contain a separate column for each service area and the report must identify each separate distribution system; or

(B) the system may produce separate reports tailored to include data for each service area.

(7) The table must clearly identify any data indicating violations of MCLs or treatment techniques, and the report must contain a clear and readily understandable explanation of the violation, including the length of the violation, the potential adverse health effects, and actions taken by the system to address the violation. To describe the potential health effects, the system shall use the relevant language of section 6(c) of this rule.

(f) Each report must contain the following information on *Cryptosporidium*, radon, and other contaminants:

(1) If the system has performed any monitoring for *Cryptosporidium*, including monitoring performed to satisfy the requirements of 40 CFR 141.143*, that indicates *Cryptosporidium* may be present in the source water or the finished water, the report must include:

- (A) a summary of the results of the monitoring; and
- (B) an explanation of the significance of the results.

(2) If the system has performed any monitoring for radon that indicates radon may be present in the finished water, the report must include:

(A) the results of the monitoring; and

(B) an explanation of the significance of the results.

(3) If the system has performed additional monitoring that indicates the presence of other contaminants in the finished water, the commissioner strongly encourages systems to report any results that may indicate a health concern. To determine if results may indicate a health concern, the commissioner recommends that systems find out if EPA has proposed a National Primary Drinking Water Regulation (NPDWR) or issued a health advisory for that contaminant by calling the Safe Drinking Water Hotline at (800) 426-4791. The commissioner and EPA consider levels detected above a proposed federal or state MCL or health advisory level to indicate possible health concerns. For such contaminants, the commissioner recommends that the report includes:

(A) the results of the monitoring; and

(B) an explanation of the significance of the results noting the existence of a health advisory or a proposed regulation.

(g) In addition to the requirements of subsection (d)(5), the report must note any violation of a requirement listed in this subsection that occurred during the year covered by the report, and include a clear and readily understandable explanation of the violation, any potential adverse health effects, and the steps the system has taken to correct the violation. Violations of the following requirements must be included:

(1) Monitoring and reporting of compliance data.

(2) Filtration and disinfection prescribed by 327 IAC 8-2-8.5 and 327 IAC 8-2-8.6. For systems that have failed to install adequate filtration or disinfection equipment or processes, or have had a failure of such equipment or processes that constitutes a violation, the report must include the following language as part of the explanation of potential health effects, "inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches."

(3) Lead and copper control requirements prescribed by 327 IAC 8-2-36 through 327 IAC 8-2-47. For systems that fail to take one (1) or more actions prescribed by 327 IAC 8-2-36(d) or 327 IAC 8-2-40 through 327 IAC 8-2-43, the report must include the applicable language from section 6(c) of this rule for lead or copper, or both.

(4) Treatment techniques for acrylamide and epichlorohydrin prescribed by 327 IAC 8-2-35. For systems that violate 327 IAC 8-2-35, the report shall include the relevant language from section 6(c) of this rule.

(5) Record keeping of compliance data.

(6) Special monitoring requirements prescribed by 327 IAC 8-2-21.

(7) Violation of the terms of an administrative or judicial order.

(h) The following additional information must be contained in the report:

(1) A brief explanation regarding contaminants that may reasonably be expected to be found in drinking water, including bottled water. This explanation may include the language in clauses (A) through (C), or systems may use their own comparable language. The report must also include the language of clause (D). The language is as follows:

(A) The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally-occurring minerals, and in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activity.

(B) Contaminants that may be present in source water include the following:

(i) Microbial contaminants, such as viruses and bacteria, that may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife.

(ii) Inorganic contaminants, such as salts and metals, that can be naturally-occurring or result from urban stormwater run-off, industrial or domestic wastewater discharges, oil and gas production, mining, or farming.

(iii) Pesticides and herbicides, that may come from a variety of sources, such as agriculture, urban stormwater run-off, and residential uses.

(iv) Organic chemical contaminants, including synthetic and volatile organic chemicals, that are byproducts of industrial processes and petroleum production, and can also come from gas stations, urban stormwater run-off, and septic systems.

(v) Radioactive contaminants, that can be naturally-occurring or be the result of oil and gas production and mining activities.

(C) In order to ensure that tap water is safe to drink, the department and EPA prescribe regulations that limit the amount of certain contaminants in water provided by public water systems. Federal Drug Administration (FDA) regulations establish limits for contaminants in bottled water that must provide the same protection for public health.

(D) Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that the water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency's Safe Drinking Water Hotline at (800) 426-4791.

(2) The telephone number of the owner, operator, or designee of the community water system as a source of additional information concerning the report.

(3) In communities with a large proportion of non-English speaking residents, in which twenty percent (20%) or more of the residents speak the same language other than English, the report must contain information in the appropriate language or languages regarding the importance of the report or contain

a telephone number or address where such residents may contact the system to obtain a translated copy of the report or assistance in the appropriate language.

(4) The report must include information about opportunities for public participation in decisions that may affect the quality of water. This information may include, but is not limited to, the time and place of regularly scheduled board meetings.

(5) The systems may include such additional information as they deem necessary for public education consistent with, and not detracting from, the purpose of the report.

*The Code of Federal Regulations (CFR) citations are incorporated by reference into this rule and are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, Twelfth Floor, Room 1255, 100 North Senate Avenue, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 8-2.1-3; filed Mar 22, 2000, 3:23 p.m.: 23 IR 1899; filed Jul 23, 2001, 1:02 p.m.: 24 IR 3982; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1098*)

SECTION 10. 327 IAC 8-2.1-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.1-4 Required additional health information

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9

Affected: IC 13-18-16

Sec. 4. (a) A report must prominently display the language: "Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons, such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. U.S. Environmental Protection Agency and Centers for Disease Control guidelines on appropriate means to lessen the risk of infection by *Cryptosporidium* and other microbial contaminants are available from the Safe Drinking Water Hotline at (800) 426-4791."

(b) If a system detects arsenic at levels above twenty-five (25) micrograms per liter, but below the MCL, it shall do one (1) of the following:

(1) Include in its report the language: "The U.S. Environmental Protection Agency is reviewing the drinking water standard for arsenic because of special concerns that it may not be stringent enough. Arsenic is a naturally-occurring mineral known to cause cancer in humans at high concentrations."

(2) Write its own educational statement, if such statement is written in consultation with the commissioner, and include that statement in the report.

(c) If a system detects nitrate at levels above five (5) milligrams per liter, but below the MCL, it shall do one (1) of the following:

- (1) Include in its report the language: "Nitrate in drinking water at levels above ten (10) parts per million is a health risk for infants of less than six (6) months of age. High nitrate levels in drinking water can cause blue-baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant, seek advice from your health care provider."
- (2) Write its own educational statement, if such statement is written in consultation with the commissioner, and include that statement in the report.

(d) If a system detects lead above the action level in more than five percent (5%), and up to and including ten percent (10%), of homes sampled, it shall do one (1) of the following:

- (1) Include in its report the language: "Infants and young children are typically more vulnerable to lead in drinking water than the general population. It is possible that lead levels at your home may be higher than at other homes in the community as a result of materials used in your home's plumbing. If you are concerned about elevated lead levels in your home's water, you may wish to have your water tested and flush your tap for thirty (30) seconds to two (2) minutes before using tap water. Additional information is available from the Safe Drinking Water Hotline at (800) 426-4791."

(2) Write its own educational statement, if such statement is written in consultation with the commissioner, and include that statement in the report.

(e) If a system detects total trihalomethanes above eight-hundredths (0.08) milligrams per liter, but below the MCL in 327 IAC 8-2-5(a), as an annual average, monitored and calculated under the provisions of 327 IAC 8-2-5.3, it shall include in its report the health effects language in **section 6(c)(5)(S) table 17(G)(74) contained in section 17** of this rule. (*Water Pollution Control Board; 327 IAC 8-2.1-4; filed Mar 22, 2000, 3:23 p.m.: 23 IR 1902*)

SECTION 11. 327 IAC 8-2.1-6, AS AMENDED T 25 IR 1100, SECTION 15, IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.1-6 Other required information

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9

Affected: IC 13-18-16

Sec. 6. (a) In order to convert MCLs to numbers greater than or equal to one and zero-tenths (1.0) for the required table referenced in section 3 of this rule, a community water system shall use the following table:

Table 6-1: Converting MCL Compliance Values for Consumer Confidence Reports

Contaminant	MCL in Compliance Units (mg/l)	multiply by...	MCL in CCR Units	MCLG in CCR Units
Microbiological contaminants				
1. Total coliform bacteria			5% of monthly samples are positive (systems that collect forty (40) or more samples per month); one (1) positive monthly sample (systems that collect fewer than forty (40) samples per month).	0
2. Fecal coliform and E. coli			A routine sample and a repeat sample are total coliform positive, and one (1) is also fecal coliform or E. coli positive.	0
3. Total organic carbon	TT		TT	n/a
3. 4. Turbidity			TT (NTU)	n/a
Radioactive contaminants				
4. 5. Beta/photon emitters	4 mrem/year		4 mrem/year	0
5. 6. Alpha emitters	15 pCi/l		15 pCi/l	0
6. 7. Combined radium	5 pCi/l		5 pCi/l	0
Inorganic contaminants				
7. 8. Antimony	0.006	1,000	6 ppb	6
8. 9. Arsenic	0.05	1,000	50 ppb	n/a
9. 10. Asbestos	7 MFL		7 MFL	7
10. 11. Barium	2		2 ppm	2
11. 12. Beryllium	0.004	1,000	4 ppb	4

Proposed Rules

12: 13. Cadmium	0.005	1,000	5 ppb	5
13: 14. Chromium	0.1	1,000	100 ppb	100
14: 15. Copper	AL = 1.3		AL = 1.3 ppm	1.3
15: 16. Cyanide	0.2	1,000	200 ppb	200
16: 17. Fluoride	4		4 ppm	4
17: 18. Lead	AL = 0.015	1,000	AL = 15 ppb	0
18: 19. Mercury (inorganic)	0.002	1,000	2 ppb	2
19: 20. Nitrate (as nitrogen)	10		10 ppm	10
20: 21. Nitrite (as nitrogen)	1		1 ppm	1
21: 22. Selenium	0.05	1,000	50 ppb	50
22: 23. Thallium	0.002	1,000	2 ppb	0.5
Synthetic organic contaminants including pesticides and herbicides				
23: 24. 2,4-D	0.07	1,000	70 ppb	70
24: 25. 2,4,5-TP (silvex)	0.05	1,000	50 ppb	50
25: 26. Acrylamide			TT	0
26: 27. Alachlor	0.002	1,000	2 ppb	0
27: 28. Atrazine	0.003	1,000	3 ppb	3
28: 29. Benzo(a)pyrene (PAH)	0.0002	1,000,000	200 ppt	0
29: 30. Carbofuran	0.04	1,000	40 ppb	40
30: 31. Chlordane	0.002	1,000	2 ppb	0
31: 32. Dalapon	0.2	1,000	200 ppb	200
32: 33. Di(2-ethylhexyl)adipate	.4	1,000	400 ppb	400
33: 34. Di(2-ethylhexyl)phthalate	0.006	1,000	6 ppb	0
34: 35. Dibromochloropropane	0.0002	1,000,000	200 ppt	0
35: 36. Dinoseb	0.007	1,000	7 ppb	7
36: 37. Diquat	0.02	1,000	20 ppb	20
37: 38. Dioxin (2,3,7,8-TCDD)	0.00000003	1,000,000,000	30 ppq	0
38: 39. Endothall	0.1	1,000	100 ppb	100
39: 40. Endrin	0.002	1,000	2 ppb	2
40: 41. Epichlorohydrin			TT	0
41: 42. Ethylene dibromide	0.00005	1,000,000	50 ppt	0
42: 43. Glyphosate	0.7	1,000	700 ppb	700
43: 44. Heptachlor	0.0004	1,000,000	400 ppt	0
44: 45. Heptachlor epoxide	0.0002	1,000,000	200 ppt	0
45: 46. Hexachlorobenzene	0.001	1,000	1 ppb	0
46: 47. Hexachlorocyclopentadiene	0.05	1,000	50 ppb	50
47: 48. Lindane	0.0002	1,000	200 ppt	200
48: 49. Methoxychlor	0.04	1,000	40 ppb	40
49: 50. Oxamyl (vydate)	0.2	1,000	200 ppb	200
50: 51. PCBs (polychlorinated biphenyls)	0.0005	1,000,000	500 ppt	0
51: 52. Pentachlorophenol	0.001	1,000	1 ppb	0
52: 53. Picloram	0.5	1,000	500 ppb	500
53: 54. Simazine	0.004	1,000	4 ppb	4
54: 55. Toxaphene	0.003	1,000	3 ppb	0
Volatile organic contaminants				
55: 56. Benzene	0.005	1,000	5 ppb	0
57: Bromate	.010	1,000	10 ppb	0
56: 58. Carbon tetrachloride	0.005	1,000	5 ppb	0
59: Chloramines	MRDL = 4		MRDL = 4 ppm	MRDLG = 4
60: Chlorine	MRDL = 4		MRDL = 4 ppm	MRDLG = 4
61: Chlorite	1		1 ppm	.8
62: Chloride dioxide	MRDL = .8	1,000	MRDL = 800 ppb	MRDLG = 800

Proposed Rules

57: 63. Chlorobenzene	0.1	1,000	100 ppb	100
58: 64. o-Dichlorobenzene	0.6	1,000	600 ppb	600
59: 65. p-Dichlorobenzene	0.075	1,000	75 ppb	75
60: 66. 1,2-Dichloroethane	0.005	1,000	5 ppb	0
61: 67. 1,1-Dichloroethylene	0.007	1,000	7 ppb	7
62: 68. cis-1,2-Dichloroethylene	0.07	1,000	70 ppb	70
63: 69. trans-1,2-Dichloroethylene	0.1	1,000	100 ppb	100
64: 70. Dichloromethane	0.005	1,000	5 ppb	0
65: 71. 1,2-Dichloropropane	0.005	1,000	5 ppb	0
66: 72. Ethylbenzene	0.7	1,000	700 ppb	700
73. Haloacetic acids (HAA)	.060	1,000	60 ppb	n/a
67: 74. Styrene	0.1	1,000	100 ppb	100
68: 75. Tetrachloroethylene	0.005	1,000	5 ppb	0
69: 76. 1,2,4-Trichlorobenzene	0.07	1,000	70 ppb	70
70: 77. 1,1,1-Trichloroethane	0.2	1,000	200 ppb	200
71: 78. 1,1,2-Trichloroethane	0.005	1,000	5 ppb	3
72: 79. Trichloroethylene	0.005	1,000	5 ppb	0
73: 80. TTHMs (total trihalomethanes)	0.1	1,000	100 ppb	n/a
74: 81. Toluene	1		1 ppm	1
75: 82. Vinyl chloride	0.002	1,000	2 ppb	0
76: 83. Xylenes	10		10 ppm	10

Key:

AL = Action level.

MCL = Maximum contaminant level.

MCLG = Maximum contaminant level goal.

MFL = Million fibers per liter.

mrem/year = Millirems per year (a measure of radiation absorbed by the body).

NTU = Nephelometric turbidity units.

pCi/l = Picocuries per liter (a measure of radioactivity).

ppm = Parts per million, or milligrams per liter (mg/l).

ppb = Parts per billion, or micrograms per liter (µg/l).

ppt = Parts per trillion, or nanograms per liter (ng/l).

ppq = Parts per quadrillion, or picograms per liter (pg/l).

TT = Treatment technique.

(b) In order to show potential sources of contamination for the table required by section 3 of this rule, a community water system shall use the following table:

Table 6-2: Regulated Contaminants

Contaminant (units)	MCLG	MCL	Major Sources in Drinking Water
Microbiological contaminants			
1. Total coliform bacteria	0	5% of monthly samples are positive (systems that collect forty (40) or more samples per month); one (1) positive monthly sample (systems that collect fewer than forty (40) samples per month).	Naturally present in the environment.

Proposed Rules

2. Fecal coliform and E. coli	0	A routine sample and a repeat sample are total coliform positive, and one (1) is also fecal coliform or E. coli positive.	Human and animal fecal waste.
3. Total organic carbon	n/a	TT	Naturally present in the environment.
3 4. Turbidity	n/a	TT	Soil run-off.
Radioactive contaminants			
4 5. Beta/photon emitters (mrem/year)	0	4	Decay of natural and manmade deposits.
5 6. Alpha emitters (pCi/l)	0	15	Erosion of natural deposits.
6 7. Combined radium (pCi/l)	0	5	Erosion of natural deposits.
Inorganic contaminants			
7 8. Antimony (ppb)	6	6	Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder.
8 9. Arsenic (ppb)	n/a	50	Erosion of natural deposits; run-off from orchards; run-off from glass and electronics production wastes.
9 10. Asbestos (MFL)	7	7	Decay of asbestos cement water mains; erosion of natural deposits.
10 11. Barium (ppm)	2	2	Discharge of drilling wastes; discharge from metal refineries; erosion of natural deposits.
11 12. Beryllium (ppb)	4	4	Discharge from metal refineries and coal-burning factories; discharge from electrical, aerospace, and defense industries.
12 13. Cadmium (ppb)	5	5	Corrosion of galvanized pipes; erosion of natural deposits; discharge from metal refineries; run-off from waste batteries and paints.
13 14. Chromium (ppb)	100	100	Discharge from steel and pulp mills; erosion of natural deposits.
14 15. Copper (ppm)	1.3	AL = 1.3	Corrosion of household plumbing systems; erosion of natural deposits; leaching from wood preservatives.
15 16. Cyanide (ppb)	200	200	Discharge from steel/metal factories; discharge from plastic and fertilizer factories.
16 17. Fluoride (ppm)	4	4	Erosion of natural deposits; water additive that promotes strong teeth; discharge from fertilizer and aluminum factories.
17 18. Lead (ppb)	0	AL = 15	Corrosion of household plumbing systems; erosion of natural deposits.
18 19. Mercury (inorganic) (ppb)	2	2	Erosion of natural deposits; discharge from refineries and factories; run-off from landfills; run-off from cropland.
19 20. Nitrate (as nitrogen) (ppm)	10	10	Run-off from fertilizer use; leaching from septic tanks, sewage; erosion of natural deposits.

Proposed Rules

20: 21. Nitrite (as nitrogen) (ppm)	1	1	Run-off from fertilizer use; leaching from septic tanks, sewage; erosion of natural deposits.
21: 22. Selenium (ppb)	50	50	Discharge from petroleum and metal refineries; erosion of natural deposits; discharge from mines.
22: 23. Thallium (ppb)	0.5	2	Leaching from ore-processing sites; discharge from electronics, glass, and drug factories.
Synthetic organic contaminants, including pesticides and herbicides			
23: 24. 2,4-D (ppb)	70	70	Run-off from herbicide used on row crops.
24: 25. 2,4,5-TP (Silvex) (ppb)	50	50	Residue of banned herbicide.
25: 26. Acrylamide	0	TT	Added to water during sewage/wastewater treatment.
26: 27. Alachlor (ppb)	0	2	Run-off from herbicide used on row crops.
27: 28. Atrazine (ppb)	3	3	Run-off from herbicide used on row crops.
28: 29. Benzo(a)pyrene (PAH) (ppt)	0	200	Leaching from linings of water storage tanks and distribution lines.
29: 30. Carbofuran (ppb)	40	40	Leaching of soil fumigant used on rice and alfalfa.
30: 31. Chlordane (ppb)	0	2	Residue of banned termiticide.
31: 32. Dalapon (ppb)	200	200	Run-off from herbicide used on rights-of-way.
32: 33. Di(2-ethylhexyl)adipate (ppb)	400	400	Discharge from chemical factories.
33: 34. Di(2-ethylhexyl)phthalate (ppb)	0	6	Discharge from rubber and chemical factories.
34: 35. Dibromochloropropane (ppt)	0	200	Run-off/leaching from soil fumigant used on soybeans, cotton, pine-apples, and orchards.
35: 36. Dinoseb (ppb)	7	7	Run-off from herbicide used on soybeans and vegetables.
36: 37. Diquat (ppb)	20	20	Run-off from herbicide use.
37: 38. Dioxin (2,3,7,8-TCDD) (ppq)	0	30	Emissions from waste incineration and other combustion; discharge from chemical factories.
38: 39. Endothall (ppb)	100	100	Run-off from herbicide use.
39: 40. Endrin (ppb)	2	2	Residue of banned insecticide.
40: 41. Epichlorohydrin	0	TT	Discharge from industrial chemical factories; an impurity of same water treatment chemicals.
41: 42. Ethylene dibromide (ppt)	0	50	Discharge from petroleum refineries.
42: 43. Glyphosate (ppb)	700	700	Run-off from herbicide use.
43: 44. Heptachlor (ppt)	0	400	Residue of banned termiticide.
44: 45. Heptachlor epoxide (ppt)	0	200	Breakdown of heptachlor.
45: 46. Hexachlorobenzene (ppb)	0	1	Discharge from metal refineries and agricultural chemical factories.
46: 47. Hexachlorocyclopentadiene (ppb)	50	50	Discharge from chemical factories.
47: 48. Lindane (ppt)	200	200	Run-off/leaching from insecticide used on cattle, lumber, gardens.

Proposed Rules

48: 49. Methoxychlor (ppb)	40	40	Run-off/leaching from insecticide used on fruits, vegetables, alfalfa, livestock.
49: 50. Oxamyl (vydate) (ppb)	200	200	Run-off/leaching from insecticide used on apples, potatoes, and tomatoes.
50: 51. PCBs (polychlorinated biphenyls) (ppt)	0	500	Run-off from landfills; discharge of waste chemicals.
51: 52. Pentachlorophenol (ppb)	0	1	Discharge from wood preserving factories.
52: 53. Picloram (ppb)	500	500	Herbicide run-off.
53: 54. Simazine (ppb)	4	4	Herbicide run-off.
54: 55. Toxaphene (ppb)	0	3	Run-off/leaching from insecticide used on cotton and cattle.
Volatile organic contaminants			
55: 56. Benzene (ppb)	0	5	Discharge from factories; leaching from gas storage tanks and landfills.
57. Bromate (ppb)	0	10	Byproduct of drinking water chlorination.
56: 58. Carbon tetrachloride (ppb)	0	5	Discharge from chemical plants and other industrial activities.
59. Chloramines (ppm)	MRDLG = 4	MRDL = 4	Water additive used to control microbes.
60. Chlorine (ppm)	MRDLG = 4	MRDL = 4	Water additive used to control microbes.
61. Chlorite (ppm)	.8	1	Byproduct of drinking water chlorination.
62. Chloride dioxide (ppb)	MRDLG = 800	MRDL = 800	Water additive used to control microbes.
57: 63. Chlorobenzene (ppb)	100	100	Discharge from chemical and agricultural chemical factories.
58: 64. o-Dichlorobenzene (ppb)	600	600	Discharge from industrial chemical factories.
59: 65. p-Dichlorobenzene (ppb)	75	75	Discharge from industrial chemical factories.
60: 66. 1,2-Dichloroethane (ppb)	0	5	Discharge from industrial chemical factories.
61: 67. 1,1-Dichloroethylene (ppb)	7	7	Discharge from industrial chemical factories.
62: 68. cis-1,2-Dichloroethylene (ppb)	70	70	Discharge from industrial chemical factories.
63: 69. trans-1,2-Dichloroethylene (ppb)	100	100	Discharge from industrial chemical factories.
64: 70. Dichloromethane (ppb)	0	5	Discharge from pharmaceutical and chemical factories.
65: 71. 1,2-Dichloropropane (ppb)	0	5	Discharge from industrial chemical factories.
66: 72. Ethylbenzene (ppb)	700	700	Discharge from petroleum refineries.
73. Haloacetic acids (HAA) (ppb)	n/a	60	Byproduct of drinking water disinfection.
67: 74. Styrene (ppb)	100	100	Discharge from rubber and plastic factories; leaching from landfills.

68: 75. Tetrachloroethylene (ppb)	0	5	Discharge from factories and dry cleaners.
69: 76. 1,2,4-Trichlorobenzene (ppb)	70	70	Discharge from textile-finishing factories.
70: 77. 1,1,1-Trichloroethane (ppb)	200	200	Discharge from metal degreasing sites and other factories.
71: 78. 1,1,2-Trichloroethane (ppb)	3	5	Discharge from industrial chemical factories.
72: 79. Trichloroethylene (ppb)	0	5	Discharge from metal degreasing sites and other factories.
73: 80. TTHMs (total trihalomethanes) (ppb)	n/a	100	Byproduct of drinking water chlorination.
74: 81. Toluene (ppm)	1	1	Discharge from petroleum factories.
75: 82. Vinyl chloride (ppb)	0	2	Leaching from PVC piping; discharge from plastics factories.
76: 83. Xylenes (ppm)	10	10	Discharge from petroleum factories; discharge from chemical factories.

Key:

AL = Action level.

MCL = Maximum contaminant level.

MCLG = Maximum contaminant level goal.

MFL = Million fibers per liter.

mrem/year = millirems per year (a measure of radiation absorbed by the body).

NTU = Nephelometric turbidity units.

pCi/l = Picocuries per liter (a measure of radioactivity).

ppm = Parts per million, or milligrams per liter (mg/l).

ppb = Parts per billion, or micrograms per liter (µg/l).

ppt = Parts per trillion, or nanograms per liter (ng/l).

ppq = Parts per quadrillion, or picograms per liter (pg/l).

TT = Treatment technique.

(c) The language in section 17 of this rule shall be used if there is a violation referenced in section 3 of this rule and health effects language is required unless alternate language is listed in this subsection as follows:

(1) Fecal coliform/E. coli. Fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with animal or human wastes. Microbes in these wastes can cause short term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, and people with severely compromised immune systems.

(2) Fluoride. Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Children may get mottled teeth.

(Water Pollution Control Board; 327 IAC 8-2.1-6; filed Mar 22, 2000, 3:23 p.m.; 23 IR 1903; filed Nov 20, 2001, 10:20 a.m.; 25 IR 1100)

SECTION 12. 327 IAC 8-2.1-8, AS ADDED AT 25 IR 1110, SECTION 17, IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.1-8 Tier 1 public notice; form, manner, and frequency of notice

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9

Affected: IC 13-18-16

Sec. 8. (a) The following violations or situations require a Tier 1 public notice:

(1) Violation of the MCL for total coliforms when fecal coliform or E. coli are present in the water distribution system as specified in 327 IAC 8-2-7(b), or the water system fails to test for fecal coliforms or E. coli when any repeat sample tests positive for coliform as specified in 327 IAC 8-2-8.3.

(2) Violation of the MCL for nitrate, nitrite, or total nitrate and nitrite, as defined in 327 IAC 8-2-4, or when the water system fails to take a confirmation sample within twenty-four (24) hours of the system's receipt of the first sample showing an exceedance of the nitrate or nitrite MCL, as specified in 327 IAC 8-2-4.1(h)(2).

(3) Exceedance of the nitrate MCL by noncommunity water systems, where permitted to exceed the MCL by the commissioner under 327 IAC 8-2-4.

Proposed Rules

(4) Violation of the 327 IAC 8-2-8.5(c) treatment technique requirement resulting from a single exceedance of the maximum allowable turbidity limit as identified in section 16 of this rule, where the commissioner determines after consultation that a Tier 1 notice is required or where consultation does not take place within twenty-four (24) hours after the system learns of the violation.

(5) Occurrence of a waterborne disease outbreak, as defined in 327 IAC 8-2-1, or other waterborne emergency. This includes failure or significant interruption in key water treatment processes, a natural disaster that disrupts the water supply or distribution system, or a chemical spill or unexpected loading of possible pathogens into the source water that significantly increases the potential for drinking water contamination.

(6) Other violations or situations with significant potential to have serious adverse effects on human health as a result of short term exposure, as determined by the commissioner either in its regulations or on a case-by-case basis.

(7) Violation of the MRDL for chlorine dioxide as defined in 327 IAC 8-2.5-3(a) and determined according to 327 IAC 8-2.5-5.

(b) Tier 1 public notice needs to be provided as follows:

(1) Provide a public notice as soon as practical but no later than twenty-four (24) hours after the system learns of the violation.

(2) Initiate consultation with the commissioner as soon as practical, but no later than twenty-four (24) hours after the public water system learns of the violation or situation, to determine additional public notice requirements.

(3) Comply with any additional public notification requirements that are established as a result of the consultation with the commissioner, including any repeat notices or direction on the duration of the posted notices. To reach all persons served, such requirements may include:

(A) timing;

(B) form;

(C) manner;

(D) frequency; and

(E) content of repeat notices and other actions designed.

(4) Public water systems must provide the notice within twenty-four (24) hours in a form and manner reasonably

calculated to reach all persons served. The form and manner used by the public water system are to fit the specific situation, but must be designed to reach residential, transient, and nontransient users of the water system. In order to reach all persons served, water systems are to use, at a minimum, one (1) or more of the following forms of delivery:

(A) Appropriate broadcast media, such as:

(i) radio; or

(ii) television.

(B) Posting of the notice in conspicuous locations throughout the area served by the water system.

(C) Hand delivery of the notice to persons served by the water system.

(D) Another delivery method approved in writing by the commissioner.

(5) A community public water system shall give a copy of the most recent public notice to all new billing units or new hookups prior to or at the time service begins for any of the following outstanding violations:

(A) Any maximum contaminant level.

(B) Any maximum residual disinfectant level.

(C) Any treatment technique requirement.

(c) For violations of the MRDLs of disinfectants that may pose an acute risk to human health, a copy of the notice must be furnished to the radio and television stations serving the area served by the public water system as soon as possible but in no case later than seventy-two (72) hours after the violation. (*Water Pollution Control Board; 327 IAC 8-2.1-8; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1110*)

SECTION 13. 327 IAC 8-2.1-16, AS ADDED AT 25 IR 1115, SECTION 25, IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.1-16 Drinking water violations; other situations requiring public notice

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9

Affected: IC 13-18-16

Sec. 16. (a) Drinking water violations and other situations that require public notice according to this rule are contained in the following table:

Table 16. Drinking Water Violations and Other Situations Requiring Public Notice				
Contaminant	MCL/MRDL/TT/AL Violations		Monitoring and Testing Procedure Violations	
	Tier of Public Notice Required	Citation	Tier of Public Notice Required	Citation
I. Violations of Drinking Water Regulations:				
A. Microbiological Contaminants				
1. Total coliform	2	327 IAC 8-2-7(a)	3	327 IAC 8-2-8 327 IAC 8-2-8.1 327 IAC 8-2-8(f) 327 IAC 8-2-8.2 327 IAC 8-2-8.3

Proposed Rules

2. Fecal coliform/E. coli	1	327 IAC 8-2-7(b)	1, 3	327 IAC 8-2-8.3
3. Turbidity TT (resulting from a single exceedance of maximum allowable turbidity levels)	2,1	327 IAC 8-2-8.5(a) 327 IAC 8-2.6- 3(1)(B) 327 IAC 8-2.6-3(2)	3	327 IAC 8-2-8.8(b) 327 IAC 8-2.6-4
4. Surface Water Treatment Rule violations, other than violations resulting from single exceedance of maximum allowable turbidity level (TT)	2	327 IAC 8-2-8.5 327 IAC 8-2-8.6	3	327 IAC 8-2-8.8
5. Interim Enhanced Surface Water Treatment Rule violations, other than violations resulting from single exceedance of maximum allowable turbidity level (TT)	2	327 IAC 8-2.6-1 327 IAC 8-2.6-2 327 IAC 8-2.6-3	3	327 IAC 8-2.6-2 327 IAC 8-2.6-4
6. Filter Backwash Recycling Rule	2	327 IAC 8-2.6-6	3	327 IAC 8-2.6-6
B. Inorganic Chemicals (IOCs)				
1. Antimony	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
2. Arsenic	2	327 IAC 8-2-4(d) 327 IAC 8-2-4.1(l)(5)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(l)(3) 327 IAC 8-2-4.1(l)(4)
3. Asbestos (fibers >10 µm)	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(d)
4. Barium	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
5. Beryllium	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
6. Cadmium	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
7. Chromium (total)	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
8. Cyanide	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
9. Fluoride	2	327 IAC 8-2-4(c)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
10. Mercury (inorganic)	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
11. Nitrate	1	327 IAC 8-2-4(b)	1, 3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(f) 327 IAC 8-2-4.1(h)(2)
12. Nitrite	1	327 IAC 8-2-4(b)	1, 3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(g) 327 IAC 8-2-4.1(h)(2)
13. Total Nitrate and Nitrite	1	327 IAC 8-2-4(b)	3	327 IAC 8-2-4.1(c)
14. Selenium	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
15. Thallium	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)

Proposed Rules

C. Lead and Copper Rule				
1. Lead and Copper Rule (TT)	2	327 IAC 8-2-36 327 IAC 8-2-40 327 IAC 8-2-41 327 IAC 8-2-42 327 IAC 8-2-43 327 IAC 8-2-44	3	327 IAC 8-2-37 327 IAC 8-2-38 327 IAC 8-2-39 327 IAC 8-2-45
D. Synthetic Organic Chemicals (SOCs)				
1. 2,4-D	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
2. 2,4,5-TP (Silvex)	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
3. Alachlor	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
4. Atrazine	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
5. Benzo(a)pyrene (PAHs)	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
6. Carbofuran	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
7. Chlordane	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
8. Dalapon	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
9. Di (2-ethylhexyl) adipate	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
10. Di (2-ethylhexyl) phthalate	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
11. Dibromochloropropane	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
12. Dinoseb	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
13. Dioxin (2,3,7,8-TCDD)	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
14. Diquat	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
15. Endothall	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
16. Endrin	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
17. Ethylene dibromide	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
18. Glyphosate	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
19. Heptachlor	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
20. Heptachlor epoxide	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
21. Hexachlorobenzene	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
22. Hexachlorocyclo-pentadiene	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
23. Lindane	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
24. Methoxychlor	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
25. Oxamyl (Vydate)	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
26. Pentachlorophenol	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
27. Picloram	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
28. Polychlorinated biphenyls (PCBs)	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
29. Simazine	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
30. Toxaphene	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
E. Volatile Organic Chemicals (VOCs)				
1. Benzene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
2. Carbon tetrachloride	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
3. Chlorobenzene (monochlorobenzene)	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
4. o-Dichlorobenzene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
5. p-Dichlorobenzene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
6. 1,2-Dichloroethane	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
7. 1,1-Dichloroethylene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
8. cis-1,2-Dichloroethylene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
9. trans-1,2-Dichloroethylene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
10. Dichloromethane	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5

Proposed Rules

11. 1,2-Dichloropropane	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
12. Ethylbenzene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
13. Styrene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
14. Tetrachloroethylene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
15. Toluene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
16. 1,2,4-Trichlorobenzene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
17. 1,1,1-Trichloroethane	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
18. 1,1,2-Trichloroethane	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
19. Trichloroethylene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
20. Vinyl chloride	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
21. Xylenes (total)	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
F. Radioactive Contaminants				
1. Beta/photon emitters	2	327 IAC 8-2-10	3	327 IAC 8-2-10.2 327 IAC 8-2-10.2(b)
2. Alpha emitters	2	327 IAC 8-2-9(2)	3	327 IAC 8-2-10.2 327 IAC 8-2-10.2(a)
3. Combined radium (226 and 228)	2	327 IAC 8-2-9(1)	3	327 IAC 8-2-10.2 327 IAC 8-2-10.2(a)
G. Disinfection Byproducts (DBPs). Where disinfection is used in the treatment of drinking water, disinfectants combine with organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). EPA sets standards for controlling the levels of DBPs in drinking water.				
1. Total trihalomethanes (TTHMs)	2	327 IAC 8-2-5(a) and 327 IAC 8-2-5(c)	3	327 IAC 8-2-5.3
2. Haloacetic acids (HAA5)	2	327 IAC 8-2.5-2(a)	3	327 IAC 8-2.5-6(a) and 327 IAC 8-2.5-6(b)
3. Bromate	2	327 IAC 8-2.5-2(a)	3	327 IAC 8-2.5-6(a) and 327 IAC 8-2.5-6(b)
4. Chlorite	2	327 IAC 8-2.5-2(a)	3	327 IAC 8-2.5-6(a) and 327 IAC 8-2.5-6(b)
5. Chlorine (MRDL)	2	327 IAC 8-2.5-3(a)	3	327 IAC 8-2.5-6(a) and 327 IAC 8-2.5-6(c)
6. Chloramine (MRDL)	2	327 IAC 8-2.5-3(a)	3	327 IAC 8-2.5-6(a) and 327 IAC 8-2.5-6(c)
7. Chlorine dioxide (MRDL), where any 2 consecutive daily samples at entrance to distribution system only are above MRDL	2	327 IAC 8-2.5-3(a)	2, 3	327 IAC 8-2.5-6(a), 327 IAC 8-2.5-6(c), and 327 IAC 8-2.5-7(c)(2)
8. Chlorine dioxide (MRDL), where samples in distribution system the next day are also above MRDL	1	327 IAC 8-2.5-3(a)	1	327 IAC 8-2.5-6(a) and 327 IAC 8-2.5-6(c), 327 IAC 8-2.5-7(c)(2)
9. Control of DBP precursors - TOC (TT)	2	327 IAC 8-2.5-9(a) and 327 IAC 8-2.5-9(b)	3	327 IAC 8-2.5-6(a) and 327 IAC 8-2.5-6(d)
10. Bench marking and disinfection profiling	N/A	N/A	3	327 IAC 8-2.6-2
11. Development of monitoring plan	N/A	N/A	3	327 IAC 8-2.5-6(f)
H. Other Treatment Techniques				
1. Acrylamide (TT)	2	327 IAC 8-2-35	N/A	N/A
2. Epichlorohydrin (TT)	2	327 IAC 8-2-35	N/A	N/A

Proposed Rules

II. Unregulated Contaminant Monitoring:				
A. Nickel	N/A	N/A	3	327 IAC 8-2-4.1(e)
III. Other Situations Requiring Public Notification:				
A. Fluoride secondary maximum contaminant level (SMCL) exceedance	3	40 CFR § 143.3*	N/A	N/A
B. Exceedance of nitrate MCL for noncommunity systems, as allowed by the commissioner	1	327 IAC 8-2-4(b)	N/A	N/A
C. Waterborne disease outbreak	1	327 IAC 8-2-1	N/A	N/A
D. Other waterborne emergency	1	N/A	N/A	N/A
E. Other situations as determined by the commissioner	1, 2, 3	N/A	N/A	N/A

Key:

MCL = Maximum contaminant level

TT = Treatment technique

Violations of drinking water regulations is ~~used here to included~~ **include** violations of MCL, MRDL, treatment technique, monitoring, and testing procedure requirements.

(b) Drinking water violations and other situations that require public notice according to this rule are contained in the following provisions:

(1) Violations and other situations not listed in ~~this table 16 in subsection (a),~~ such as reporting violations and failure to prepare Consumer Confidence Report do not require notice, unless otherwise determined by the commissioner. The commissioner may, ~~optionally,~~ **at their option,** also require a more stringent public notice tier such as Tier 1 instead of Tier 2 or Tier 2 instead of Tier 3 for specific violations and situations listed in ~~the above:~~ **table 16 in subsection (a).**

(2) Failure to test for fecal coliform or E. coli is a Tier 1 violation if testing is not done after any repeat sample tests positive for coliform. All other total coliform monitoring and testing procedure violations are Tier 3.

(3) Systems with treatment technique violations involving a single exceedance of maximum turbidity limit under the surface water treatment rule (SWTR) are required to initiate consultation with the commissioner within twenty-four (24) hours after learning of the violation. Based on this consultation, the commissioner may subsequently decide to elevate the violation to Tier 1. If a system is unable to make contact with the commissioner in the twenty-four (24) hour period, the violation is automatically elevated to Tier 1.

(4) Failure to take a confirmation sample within twenty-four (24) hours for nitrate or nitrite after an initial sample exceeds the MCL is a Tier 1 Violation. Other monitoring violations for nitrate are Tier 3.

(5) Other waterborne emergencies require a Tier 1 public notice under section 8(a) of this rule for situations that do not meet the definition of a waterborne disease outbreak given in 327 IAC 8-2-1, but that still have the potential to have serious

adverse effects on health as a result of short-term exposure. These could include outbreaks not related to treatment deficiencies, as well as situations that have the potential to cause outbreaks, such as failures or significant interruption in water treatment processes, natural disasters that disrupt the water supply or distribution system, chemical spills, or unexpected loading of possible pathogens into the source water.

(6) The commissioner may place other situations in any tier believed appropriate, based on threat to public health.

*40 CFR 143.3 is incorporated by reference and is available for copying at the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 8-2.1-16; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1115; errata filed Feb 22, 2002, 2:01 p.m.: 25 IR 2254*)

SECTION 14. 327 IAC 8-2.1-17, AS ADDED AT 25 IR 1118, SECTION 26, IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.1-17 Drinking water violations; standard health effects language for public notice

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9

Affected: IC 13-18-16

Sec. 17. A public water system must comply with the standard health effects language for public notification contained in the following table:

Table 17. Standard Health Effects Language for Public Notification

Contaminant	MCLG mg/L	MCL mg/L	Standard Health Effects Language for Public Notification
Drinking Water Regulations:			
A. Microbiological Contaminants, Surface Water Treatment Rule, and Interim Enhanced Surface Water Treatment Rule			
1a. Total coliform	Zero 0	See foot-note	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.
1b. Fecal coliform/E. coli	Zero 0	Zero 0	Fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.
2a. Turbidity (MCL)	None	1 NTU/ 5 NTU	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.
2b. Turbidity (SWTR TT) and (IESWTR TT)	None	TT	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.
2c. Giardia lamblia 2d. Viruses 2e. Heterotrophic plate count (HPC) bacteria 2f. Legionella 2g. Cryptosporidium	0	TT	Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms, such as nausea, cramps, diarrhea, and associated headaches.
B. Inorganic Chemicals (IOCs)			
3. Antimony	0.006	0.006	Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.
4. Arsenic	None	0.05	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.
5. Asbestos (>10 µm)	7 MFL	7 MFL	Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.
6. Barium	2	2	Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.
7. Beryllium	0.004	0.004	Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.
8. Cadmium	0.005	0.005	Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.
9. Chromium (total)	0.1	0.1	Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.
10. Cyanide	0.2	0.2	Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.

Proposed Rules

11. Fluoride	4.0	4.0	Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL or more may cause mottling of children's teeth, usually in children less than nine (9) years old. Mottling, also known as dental fluorosis, may include brown staining or pitting of the teeth, or both, and occurs only in developing teeth before they erupt from the gums.
12. Mercury (inorganic)	0.002	0.002	Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.
13. Nitrate	10	10	Infants below the age of six (6) months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
14. Nitrite	1	1	Infants below the age of six (6) months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
15. Total Nitrate and Nitrite	10	10	Infants below the age of six (6) months who drink water containing nitrate and nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
16. Selenium	0.05	0.05	Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.
17. Thallium	0.0005	0.002	Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.
C. Lead and Copper Rule			
18. Lead	Zero 0	TT	Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.
19. Copper	1.3	TT	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.
D. Synthetic Organic Chemicals (SOCs)			
20. 2,4-D	0.07	0.07	Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.
21. 2,4,5-TP (Silvex)	0.05	0.05	Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.
22. Alachlor	Zero 0	0.002	Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.
23. Atrazine	0.003	0.003	Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.

Proposed Rules

24. Benzo(a)pyrene (PAHs)	Zero 0	0.0002	Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.
25. Carbofuran	0.04	0.04	Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.
26. Chlordane	Zero 0	0.002	Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.
27. Dalapon	0.2	0.2	Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.
28. Di (2-ethylhexyl) adipate	0.4	0.4	Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience general toxic effects or reproductive difficulties.
29. Di (2-ethylhexyl) phthalate	Zero 0	0.006	Some people who drink water containing di (2-ethylhexyl) phthalate in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.
30. Dibromochloropropane (DBCP)	Zero 0	0.0002	Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
31. Dinoseb	0.007	0.007	Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.
32. Dioxin (2,3,7,8-TCDD)	Zero 0	3×10^{-8}	Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
33. Diquat	0.02	0.02	Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.
34. Endothall	0.1	0.1	Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.
35. Endrin	0.002	0.002	Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.
36. Ethylene dibromide	Zero 0	0.00005	Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.
37. Glyphosate	0.7	0.7	Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.
38. Heptachlor	Zero 0	0.0004	Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.
39. Heptachlor epoxide	Zero 0	0.0002	Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.
40. Hexachlorobenzene	Zero 0	0.001	Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.
41. Hexachlorocyclopentadiene	0.05	0.05	Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.

Proposed Rules

42. Lindane	0.0002	0.0002	Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.
43. Methoxychlor	0.04	0.04	Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.
44. Oxamyl (Vydate)	0.2	0.2	Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.
45. Pentachlorophenol	Zero 0	0.001	Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.
46. Picloram	0.5	0.5	Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.
47. Polychlorinated biphenyls (PCBs)	Zero 0	0.0005	Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.
48. Simazine	0.004	0.004	Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.
49. Toxaphene	Zero 0	0.003	Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.
E. Volatile Organic Chemicals (VOCs)			
50. Benzene	Zero 0	0.005	Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.
51. Carbon tetrachloride	Zero 0	0.005	Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
52. Chlorobenzene (monochlorobenzene)	0.1	0.1	Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.
53. o-Dichlorobenzene	0.6	0.6	Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.
54. p-Dichlorobenzene	0.075	0.075	Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.
55. 1,2-Dichloroethane	Zero 0	0.005	Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.
56. 1,1-Dichloroethylene	0.007	0.007	Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
57. cis-1,2-Dichloroethylene	0.07	0.07	Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
58. trans-1,2-Dichloroethylene	0.1	0.1	Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.
59. Dichloromethane	Zero 0	0.005	Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.
60. 1,2-Dichloropropane	Zero 0	0.005	Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.

Proposed Rules

61. Ethylbenzene	0.7	0.7	Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.
62. Styrene	0.1	0.1	Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.
63. Tetrachloroethylene	Zero 0	0.005	Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.
64. Toluene	1	1	Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.
65. 1,2,4-Trichlorobenzene	0.07	0.07	Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.
66. 1,1,1-Trichloroethane	0.2	0.2	Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.
67. 1,1,2-Trichloroethane	0.003	0.005	Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.
68. Trichloroethylene	Zero 0	0.005	Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
69. Vinyl chloride	Zero 0	0.002	Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.
70. Xylenes (total)	10	10	Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.
F. Radioactive Contaminants			
71. Beta/photon emitters	Zero 0	4 mrem/yr	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.
72. Alpha emitters	Zero 0	15 pCi/L	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
73. Combined radium (226 and 228)	Zero 0	5 pCi/L	Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.
G. Disinfection Byproducts (DBPs): Where disinfection is used in the treatment of drinking water, disinfectants combine with organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). EPA sets standards for controlling the levels of disinfectants and DBPs in drinking water.			
74. Total trihalomethanes (TTHMs)	N/A	0.10/ 0.080	Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous system, and may have an increased risk of getting cancer.
75. Haloacetic acids (HAA)	N/A	0.060	Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.
76. Bromate	0	0.010	Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.

Proposed Rules

77. Chlorite	0.08	1.0	Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.
78. Chlorine	4 MRDLG	4.0 MRDL	Some people who use drinking water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.
79. Chloramines	4 MRDLG	4.0 MRDL	Some people who use drinking water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.
80a. Chlorine dioxide, where any 2 consecutive daily samples taken at the entrance to the distribution system are above the MRDL	0.8 MRDLG	0.8 MRDL	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia. Add for public notification only: The chlorine dioxide violations reported today are the result of exceedances at the treatment facility only, not within the distribution system that delivers water to consumers. Continued compliance with chlorine dioxide levels within the distribution system minimizes the potential risk of these violations to consumers.
80b. Chlorine dioxide, where one or more distribution system samples are above the MRDL	0.8 MRDLG	0.8 MRDL	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia. Add for public notification only: The chlorine dioxide violations reported today include exceedances of the EPA standard within the distribution system which delivers water to consumers. Violations of the chlorine dioxide standard within the distribution system may harm human health based on short-term exposures. Certain groups, including fetuses, infants, and young children, may be especially susceptible to nervous system effects from excessive chlorine dioxide exposure.
81. Control of DBP precursors (TOC)	None	TT	Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection byproducts. These byproducts include trihalomethanes (THMs) and haloacetic acids (HAAs). Drinking water containing these byproducts in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.
H. Other Treatment Techniques			
75: 82. Acrylamide	Zero 0	TT	Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.
76: 83. Epichlorohydrin	Zero 0	TT	Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.

Key:

MCLG - Maximum contaminant level goal

MCL - Maximum contaminant level

NTU - Nephelometric turbidity unit

TT - Treatment technique

MFL - Millions of fiber per liter

Action Level (Lead) = 0.015 mg/L

Action Level (Copper) = 1.3 mg/L

mrem - millirems per year

ppq - picocuries per liter

(1) For water systems analyzing at least forty (40) samples per month, no more than five percent (5.0%) of the monthly samples may be positive for total coliforms. For systems analyzing fewer than forty (40) samples per month, no more than one (1) sample per month may be positive for total coliforms.

(2) The bacteria detected by heterotrophic plate count (HPC) are not necessarily harmful. HPC is simply an alternative method of determining disinfectant residual levels. The number of such bacteria is an indicator of whether there is enough disinfectant in the distribution system.

(3) SWTR treatment technique violations that involve turbidity exceedances may use the health effects language for turbidity instead.

(4) The bacteria detected by **heterotrophic plate count** (HPC) are not necessarily harmful. HPC is simply an alternative method of determining disinfectant residual levels. The number of such bacteria is an indicator of whether there is enough disinfectant in the distribution system.

(5) The MCL for total trihalomethanes is the sum of the concentrations of the individual trihalomethanes.

(Water Pollution Control Board; 327 IAC 8-2.1-17; filed Nov 20, 2001, 10:20 a.m.: 25 IR 1118; errata filed Feb 22, 2002, 2:01 p.m.: 25 IR 2254)

SECTION 15. 327 IAC 8-2.5 IS ADDED TO READ AS FOLLOWS:

Rule 2.5. Disinfectants and Disinfection

327 IAC 8-2.5-1 Maximum residual disinfectant level goals; disinfectants

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2

Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 1. MRDLGs for disinfectants are as follows:

<u>Disinfectant Residual</u>	<u>MRDLG (mg/L)</u>
Chlorine	4.0 (as Cl ₂)
Chloramines	4.0 (as Cl ₂)
Chlorine dioxide	0.8 (as ClO ₂)

(Water Pollution Control Board; 327 IAC 8-2.5-1)

327 IAC 8-2.5-2 Maximum contaminant levels; disinfection byproducts

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2

Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 2. (a) The MCLs for disinfection byproducts are as follows:

<u>Disinfection Byproduct</u>	<u>MCL (mg/L)</u>
Total trihalomethanes (TTHM)	0.080
Haloacetic acids (five) (HAA5)	0.060
Bromate	0.010
Chlorite	1.0

(b) A system that is installing GAC or membrane technology to comply with this section may apply to the commissioner for an extension of up to twenty-four (24) months past the dates in section 4(b) of this rule, but not later than December 31, 2003. In granting the extension, the commissioner shall set a schedule for compliance and may specify any interim measures that the system must take.

(c) The commissioner hereby identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for disinfection byproducts identified in subsection (a):

<u>Disinfection Byproduct</u>	<u>Best Available Technology</u>
TTHM	Enhanced coagulation or enhanced softening or GAC10, with chlorine as the primary and residual disinfectant.
HAA5	Enhanced coagulation or enhanced softening or GAC10, with chlorine as the primary and residual disinfectant.
Bromate	Control of ozone treatment process to reduce production of bromate.
Chlorite	Control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels.

(Water Pollution Control Board; 327 IAC 8-2.5-2)

327 IAC 8-2.5-3 Maximum residual disinfectant levels

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2

Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Proposed Rules

Sec. 3. (a) MRDLs are as follows:

<u>Disinfectant Residual</u>	<u>MRDL (mg/L)</u>
Chlorine	4.0 (as Cl ₂)
Chloramines	4.0 (as Cl ₂)
Chlorine dioxide	0.8 (as ClO ₂)

(b) The commissioner hereby identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the MRDLs identified in subsection (a):

(1) Control of treatment processes to reduce disinfectant demand.

(2) Control of disinfection treatment processes to reduce disinfectant levels.

(Water Pollution Control Board; 327 IAC 8-2.5-3)

327 IAC 8-2.5-4 General requirements; disinfectant residuals, disinfection byproducts, and disinfection byproducts precursors

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2

Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 4. (a) The general requirements for disinfectant residuals, disinfection byproducts, and disinfection byproducts precursors are as follows:

(1) A CWS or an NTNCWS, which adds a chemical disinfectant to the water in any part of the drinking water treatment process, shall modify its practices to meet MCLs and MRDLs in sections 2(a) and 3(a) of this rule, respectively, and shall meet the treatment technique requirements for disinfection byproduct precursors in section 9 of this rule.

(2) A TWS that uses chlorine dioxide as a disinfectant or oxidant shall modify its practices to meet the MRDL for chlorine dioxide in section 3(a) of this rule.

(b) Compliance dates for CWSs and NTNCWSs are as follows:

(1) A subpart H system serving a population of ten thousand (10,000) or more individuals shall comply with this section upon the effective date of this rule.

(2) A subpart H system serving a population of fewer than ten thousand (10,000) individuals and a system using only ground water not under the direct influence of surface water shall comply with this section beginning January 1, 2004.

(c) Compliance dates for TWSs are as follows:

(1) A subpart H system serving a population of ten thousand (10,000) or more individuals and using chlorine dioxide as a disinfectant or oxidant shall comply with requirements for chlorine dioxide in this section upon the effective date of this rule.

(2) A subpart H system serving a population of fewer than ten thousand (10,000) individuals and using chlorine

dioxide as a disinfectant or oxidant and a system using only ground water not under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant shall comply with requirements for chlorine dioxide in this section beginning January 1, 2004.

(d) A CWS or a NTNCWS regulated under subsection (a) must be operated by qualified personnel who meet the requirements specified by 327 IAC 8-12.

(e) Notwithstanding the MRDLs in section 3 of this rule, systems may increase residual disinfectant levels in the distribution system of chlorine or chloramines, but not chlorine dioxide, to a level and for a time necessary to protect public health and to address specific microbiological contamination problems caused by circumstances, including the following:

(1) Distribution line breaks.

(2) Storm water run-off events.

(3) Source water contamination events.

(4) Cross-connection events.

(Water Pollution Control Board; 327 IAC 8-2.5-4)

327 IAC 8-2.5-5 Analytical requirements; disinfectant residuals, disinfection byproducts, and disinfection byproducts precursors

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2

Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 5. (a) Systems shall use only one (1) or more of the analytical methods specified in this subsection. These methods are incorporated by reference and may be obtained as follows:

(1) EPA Method 552.1 is in Methods for the Determination of Organic Compounds in Drinking Water-Supplement II, U.S. EPA, August 1992, EPA/600/R-92/129 (available through National Information Technical Service (NTIS), PB92-207703).

(2) EPA Methods 502.2, 524.2, 551.1, and 552.2 are in Methods for the Determination of Organic Compounds in Drinking Water-Supplement III, U.S. EPA, August 1995, EPA/600/R-95/131. (available through NTIS, PB95-261616).

(3) EPA Methods 300.0 and 150.1 are in Methods for the Determination of Inorganic Substances in Environmental Samples, U.S. EPA, August 1993, EPA/600/R-93/100. (available through NTIS, PB94-121811).

(4) EPA Method 300.1 is in U.S. EPA Method 300.1, Determination of Inorganic Anions in Drinking Water by Ion Chromatography, Revision 1.0, U.S. EPA, 1997, EPA/600/R-98/118 (available through NTIS, PB98-169196); also available from: Chemical Exposure Research Branch, Microbiological & Chemical Exposure Assessment Research Division, National Exposure Research Laboratory, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268, Fax Number: 513-569-7757, Phone number: 513-569-7586.

(5) Standard Methods 4500-Cl D, 4500-Cl E, 4500-Cl F, 4500-Cl G, 4500-Cl H, 4500-Cl I, 4500-Cl O₂ D, 4500-Cl O₂ E, 4500-H⁺ B, 6251 B, and 5910 B shall be followed in accordance with Standard Methods for the Examination of Water and Wastewater, 19th Edition, American Public Health Association, 1995. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street, NW, Washington, D.C. 20005.

(6) Standard Methods 5310 B, 5310 C, and 5310 D shall be followed in accordance with the Supplement to the 19th Edition of Standard Methods for the Examination of Water and Wastewater, American Public Health Association, 1996. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street, NW, Washington, D.C. 20005.

(7) ASTM Methods D 1253-86 and D1293-95 shall be followed in accordance with the Annual Book of ASTM Standards, Volume 11.01, American Society for Testing and Materials, 1996 edition. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428. These methods are also available for copying at the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, Room 1254, Indianapolis, Indiana 46204.

(b) Analytical requirements for disinfection byproducts are as follows:

(1) Systems shall measure disinfection byproducts by the methods, as modified by the footnotes, listed in the following table:

APPROVED METHODS FOR DISINFECTION BYPRODUCT COMPLIANCE MONITORING

Methodology ²	EPA Method	Standard Method	Byproduct Measured ¹			
			TTHM	HAA5	Chlorite ⁴	Bromate
P&T/GC/EICD & PID	502.2 ³		X			
P&T/GC/MS	524.2		X			
LLE/GC/ECD	551.1		X			
LLE/GC/ECD		6251 B		X		
SPE/GC/ECD	552.1			X		
LLE/GC/ECD	552.2			X		
Amperometric Titration		4500-ClO ₂ E			X	
IC	300.0				X	
IC	300.1				X	X

¹X indicates method is approved for measuring specified disinfection byproduct.

²P&T = purge and trap; GC = gas chromatography; EICD = electrolytic conductivity detector; PID = photoionization detector; MS = mass spectrometer; LLE = liquid/liquid extraction; ECD = electron capture detector; SPE = solid phase extractor; IC = ion chromatography.

³If TTHMs are the only analytes being measured in the sample, then a PID is not required.

⁴Amperometric titration may be used for routine daily monitoring of chlorite at the entrance to the distribution system, as prescribed in section 6(b)(2)(A)(i) of this rule. Ion chromatography must be used for routine monthly monitoring of chlorite and additional monitoring of chlorite in the distribution system, as prescribed in section 6(b)(2)(A)(ii) and 6(b)(2)(B) of this rule.

(2) Analysis under this subsection for disinfection byproducts must be conducted by laboratories that have received certification by the commissioner, except as specified under subdivision (3). To receive certification to conduct analyses for the contaminants in section 2(a) of this rule, the laboratory must carry out annual analyses of performance evaluation (PE) samples approved by the commissioner. In these analyses of PE samples, the laboratory must achieve quantitative results within the acceptance limit on a minimum of eighty percent (80%) of the analytes included in each PE sample. The acceptance limit is defined as the ninety-five percent (95%) confidence interval calculated around the mean of the PE

study data between a maximum and minimum acceptance limit of plus or minus fifty percent (50%) and plus or minus fifteen percent (15%) of the study mean.

(3) A certified operator or other party as approved by the commissioner shall measure daily chlorite samples at the entrance to the distribution system.

(c) Analytical requirements for disinfectant residuals are as follows:

(1) A system shall measure residual disinfectant concentrations for free chlorine, combined chlorine (chloramines), and chlorine dioxide by the methods listed in the following table:

APPROVED METHODS FOR DISINFECTANT RESIDUAL COMPLIANCE MONITORING

Methodology	Standard Method	ASTM Method	Residual Measured ¹			
			Free Chlorine	Combined Chlorine	Total Chlorine	Chlorine Dioxide
Amperometric Titration	4500-Cl D	D 1253-86	X	X	X	
Low Level Amperometric Titration	4500-Cl E				X	
DPD ² Ferrous Titrimetric	4500-Cl F		X	X	X	
DPD ² Colorimetric	4500-Cl G		X	X	X	
Syringaldazine (FACTS)	4500-Cl H		X			
Iodometric Electrode	4500-Cl I				X	
DPD ²	4500-ClO ₂ D					X
Amperometric Method II	4500-ClO, E					X

¹X indicates method is approved for measuring specified disinfectant residual.

²DPD means N,N-diethyl-4-phenylene diamine.

(2) If approved by the commissioner, a system may also measure residual disinfectant concentrations for chlorine, chloramines, and chlorine dioxide by using DPD colorimetric test kits.

(3) Residual disinfectant concentration may be measured only by a certified operator or a party approved by the commissioner.

(d) Systems required to analyze parameters not included in subsections (b) and (c) shall use the following methods:

(1) All methods allowed in 327 IAC 8-2-45 for measuring alkalinity and pH.

(2) For bromide, EPA Method 300.0 or EPA Method 300.1.

(3) A system shall use one or all of the following methods for TOC:

(A) Standard Method 5310 B (High-Temperature Combustion Method).

(B) Standard Method 5310 C (Persulfate-Ultraviolet or Heated-Persulfate Oxidation Method).

(C) Standard Method 5310 D (Wet-Oxidation Method).

TOC samples may not be filtered prior to analysis. TOC samples must either be analyzed or must be acidified to achieve pH less than two (2.0) by minimal addition of phosphoric or sulfuric acid as soon as practical after sampling, not to exceed twenty-four (24) hours. Acidified TOC samples must be analyzed within twenty-eight (28) days.

(4) SUVA is equal to the UV absorption at two hundred fifty-four (254) nanometers (UV₂₅₄) (measured in m⁻¹) divided by the dissolved organic carbon (DOC) concentration (measured as milligrams per liter). In order to determine SUVA, UV₂₅₄ and DOC must be measured separately. When determining SUVA, systems shall use the following methods:

(A) A system shall use one (1) or more of the following methods to measure DOC:

(i) Standard Method 5310 B (High-Temperature Combustion Method).

(ii) Standard Method 5310 C (Persulfate-Ultraviolet or Heated-Persulfate Oxidation Method).

(iii) Standard Method 5310 D (Wet-Oxidation Method).

(B) Prior to analysis under clause (A), DOC samples must be filtered through a forty-five hundredths (0.45) micrometer pore-diameter filter. Water passed through the filter prior to filtration of the sample must serve as the filtered blank. This filtered blank must be analyzed using procedures identical to those used for analysis of the samples and must meet the following criteria:

(i) DOC is less than five-tenths (0.5) milligram per liter.

(ii) DOC samples must be filtered through the forty-five hundredths (0.45) micrometer pore-diameter filter prior to acidification.

(iii) DOC samples must either be analyzed or must be acidified to achieve pH less than two (2.0) by minimal addition of phosphoric or sulfuric acid as soon as practical after sampling, not to exceed forty-eight (48) hours.

(iv) Acidified DOC samples must be analyzed within twenty-eight (28) days.

(C) The following apply to a system required to measure UV₂₅₄ under this subdivision:

(i) A system shall use Method 5910 B (Ultraviolet Absorption Method) to measure ultraviolet absorption at two hundred fifty-four (254) nanometers (UV₂₅₄). UV absorption must be measured at two hundred fifty-three and seven-tenths (253.7) nanometers (may be rounded off to two hundred fifty-four (254) nanometers).

(ii) Prior to analysis, UV₂₅₄ samples must be filtered through a forty-five hundredths (0.45) micrometer pore-diameter filter.

(iii) The pH of UV₂₅₄ samples may not be adjusted.

(iv) Samples must be analyzed as soon as practical after sampling, not to exceed forty-eight (48) hours.

SUVA must be determined on water prior to the addition of disinfectants/oxidants by the system. DOC and UV₂₅₄ samples used to determine a SUVA value must be taken at the same time and at the same location.

(e) Parameters measured under subsection (d) must be measured by a certified operator or a party approved by the commissioner. (*Water Pollution Control Board; 327 IAC 8-2.5-5*)

327 IAC 8-2.5-6 Monitoring requirements; disinfectant residuals, disinfection byproducts, and disinfection byproducts precursors

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2

Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 6. (a) General monitoring requirements for disinfectant residuals, disinfection byproducts, and disinfection byproducts precursors are as follows:

(1) Systems shall take all samples during normal operating conditions.

(2) Systems may consider multiple wells drawing water from a single aquifer as one (1) treatment plant for determining the minimum number of TTHM and HAA5 samples required.

(3) Failure to monitor in accordance with the monitoring plan required under subsection (f) is a monitoring violation.

(4) Failure to monitor will be treated as a violation for the entire period covered by the annual average where compliance is based on a running annual average of monthly or quarterly samples or averages and the system's failure to monitor makes it impossible to determine compliance with MCLs or MRDLs.

(5) Systems may use only data collected under the provisions of subsection (b) or 40 CFR 141.140 through 40 CFR 141.144* to qualify for reduced monitoring.

(b) Monitoring requirements for disinfection byproducts are as follows:

(1) TTHM and HAA5 monitoring requirements are as follows:

(A) For routine monitoring, systems shall monitor at the frequency indicated in the following table:

ROUTINE MONITORING FREQUENCY FOR TTHM AND HAA5		
Type of System	Minimum Monitoring Frequency	Sample Location in the Distribution System
Subpart H system serving at least 10,000 persons	4 water samples per quarter per treatment plant	At least 25% of all samples collected each quarter at locations representing maximum residence time. Remaining samples taken at locations representative of at least average residence time in the distribution system and representing the entire distribution system, taking into account number of persons served, different sources of water, and different treatment methods ¹ .
Subpart H system serving from 500 to 9,999 persons	1 water sample per quarter per treatment plant	Locations representing maximum residence time ¹ .
Subpart H system serving fewer than 500 persons	1 sample per year per treatment plant during month of warmest water temperature	Locations representing maximum residence time ¹ . If the sample (or average of annual samples, if more than one sample is taken) exceeds the MCL, the system must increase monitoring to 1 sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until the system meets reduced monitoring criteria in clause (D).
System using only ground water not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons	1 water sample per quarter per treatment plant ²	Locations representing maximum residence time ¹ .

Proposed Rules

System using only ground water not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons	1 sample per year per treatment plant ² during month of warmest water temperature	Locations representing maximum residence time ¹ . If the sample (or average of annual samples, if more than 1 sample is taken) exceeds the MCL, the system must increase monitoring to 1 sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until the system meets criteria in clause (D) for reduced monitoring.
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¹If a system elects to sample more frequently than the minimum required, at least twenty-five percent (25%) of all samples collected each quarter, including those taken in excess of the required frequency, must be taken at locations that represent the maximum residence time of the water in the distribution system. The remaining samples must be taken at locations representative of at least average residence time in the distribution system.

²Multiple wells drawing water from a single aquifer may be considered one (1) treatment plant for determining the minimum number of samples required.

(B) Systems may reduce monitoring, except as otherwise provided, in accordance with the following table:

REDUCED MONITORING FREQUENCY FOR TTHM AND HAA5		
IF YOU ARE A:	AND YOU HAVE MONITORED AT LEAST ONE YEAR AND YOUR:	YOU MAY REDUCE MONITORING TO THIS LEVEL:
Subpart H system serving at least 10,000 persons that has a source water annual average TOC level, before any treatment, ≤ 4.0 mg/L	TTHM annual average ≤ 0.040 mg/L and HAA5 annual average ≤ 0.030 mg/L	1 sample per treatment plant per quarter at distribution system location reflecting maximum residence time
Subpart H system serving from 500 to 9,999 persons that has a source water annual average TOC level, before any treatment, ≤ 4.0 mg/L	TTHM annual average ≤ 0.040 mg/L and HAA5 annual average ≤ 0.030 mg/L	1 sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature. NOTE: Any Subpart H system serving fewer than 500 persons may not reduce its monitoring to less than one sample per treatment plant per year.
System using only ground water not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons	TTHM annual average ≤ 0.040 mg/L and HAA5 annual average ≤ 0.030 mg/L	1 sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature
System using only ground water not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons	TTHM annual average ≤ 0.040 mg/L and HAA5 annual average ≤ 0.030 mg/L for two consecutive years OR TTHM annual average ≤ 0.020 mg/L and HAA5 annual average ≤ 0.015 mg/L for 1 year	1 sample per treatment plant per 3 year monitoring cycle at distribution system location reflecting maximum residence time during month of warmest water temperature, with the 3 year cycle beginning on January 1 following quarter in which system qualifies for reduced monitoring

(C) Systems on a reduced monitoring schedule may remain on that reduced schedule as long as the average of all samples taken in the year (for systems that must monitor quarterly) or the result of the sample (for systems that must monitor no more frequently than annually) is no more than sixty-thousandths (0.060) milligram per liter and forty-five thousandths (0.045) milligram per liter for TTHMs and HAA5, respectively. Systems that do not meet these levels shall resume monitoring at the frequency identified in the table

contained in clause (A) (minimum monitoring frequency column) in the quarter immediately following the monitoring period in which the system exceeds those levels. For systems using only ground water not under the direct influence of surface water and serving fewer than ten thousand (10,000) persons, if either the TTHM annual average is greater than eighty-thousandths (0.080) milligram per liter or the HAA5 annual average is greater than sixty-thousandth (0.060) milligram per liter, the system shall go to the increased

monitoring identified in the table contained in clause (A) (sample location column) in the quarter immediately following the monitoring period in which the system exceeds those levels.

(D) Systems on increased monitoring may return to routine monitoring if, after at least one (1) year of monitoring their TTHM annual average is equal to or less than sixty-thousandths (0.060) milligram per liter and their HAA5 annual average is equal to or less than forty-five thousandths (0.045) milligram per liter.

(E) A system may return to routine monitoring at the commissioner's discretion.

(2) CWSs and NTNCWSs using chlorine dioxide for disinfection or oxidation must conduct monitoring for chlorite as follows:

(A) Routine monitoring is as follows:

(i) Systems shall take daily samples at the entrance to the distribution system. For any daily sample that exceeds the chlorite MCL, the system shall take additional samples in the distribution system the following day at the locations required by clause (B), in addition to the sample required at the entrance to the distribution system.

(ii) Systems shall take a three (3) sample set each month in the distribution system. The system shall take one (1) sample at each of the following locations:

(AA) Near the first customer.

(BB) At a location representative of average residence time.

(CC) At a location reflecting maximum residence time in the distribution system.

Any additional routine sampling must be conducted in the same manner (as three (3) sample sets, at the specified locations). The system may use the results of additional monitoring conducted under clause (B) to meet the requirement for monitoring in this clause.

(B) On each day following a routine sample monitoring result that exceeds the chlorite MCL at the entrance to the distribution system, the system shall take three (3) chlorite distribution system samples at the following locations:

(i) As close to the first customer as possible.

(ii) In a location representative of average residence time.

(iii) As close to the end of the distribution system as possible.

(C) Monitoring for chlorite may be reduced as follows:

(i) Chlorite monitoring at the entrance to the distribution system required by clause (A)(i) may not be reduced.

(ii) Chlorite monitoring in the distribution system required by clause (A)(ii) may be reduced to one (1) three (3) sample set per quarter after one (1) year of monitoring where no individual chlorite sample taken in the distribution system under clause (A)(ii) has

exceeded the chlorite MCL and the system has not been required to conduct monitoring under clause (B). The system may remain on the reduced monitoring schedule unless one (1) of the three (3) individual chlorite samples taken monthly in the distribution system under clause (A)(ii) exceeds the chlorite MCL or the system is required to conduct monitoring under clause (B), at which time the system shall revert to routine monitoring.

(3) Monitoring for bromate is as follows:

(A) CWSs and NTNCWSs using ozone for disinfection or oxidation shall take one (1) sample per month for each treatment plant in the system using ozone. Systems shall take samples monthly at the entrance to the distribution system while the ozonation system is operating under normal conditions.

(B) Systems required to analyze for bromate may reduce monitoring from monthly to once per quarter, if the system demonstrates that the average source water bromide concentration is less than five-hundredths (0.05) milligram per liter based upon representative monthly bromide measurements for one (1) year. The system may remain on reduced bromate monitoring unless the running annual average source water bromide concentration, computed quarterly, is equal to or greater than five-hundredths (0.05) milligram per liter based upon representative monthly measurements. If the running annual average source water bromide concentration is equal to or greater than five-hundredths (0.05) milligram per liter, the system shall resume routine monitoring required by clause (A).

(c) Monitoring requirements for disinfectant residuals are as follows:

(1) Monitoring for chlorine and chloramines is as follows:

(A) CWSs and NTNCWSs that use chlorine or chloramines shall measure the residual disinfectant level in the distribution system when total coliforms are sampled, as specified in 327 IAC 8-2-8. Subpart H systems may use the results of residual disinfectant concentration sampling conducted under 327 IAC 8-2-8.8(d) for systems which filter, in lieu of taking separate samples.

(B) Monitoring for chlorine or chloramines may not be reduced.

(2) Monitoring for chlorine dioxide is as follows:

(A) CWSs, NTNCWSs, and TWSs that use chlorine dioxide for disinfection or oxidation shall take daily samples at the entrance to the distribution system. For any daily sample that exceeds the MRDL, the system shall take samples in the distribution system the following day at the locations required by clause (D), in addition to the sample required at the entrance to the distribution system.

(B) On each day following a routine sample monitoring result that exceeds the MRDL, the system is required to

take three (3) chlorine dioxide distribution system samples.

(i) If chlorine dioxide or chloramines are used to maintain a disinfectant residual in the distribution system, or if chlorine is used to maintain a disinfectant residual in the distribution system and there are no disinfection addition points after the entrance to the distribution system, for example, no booster chlorination, the system shall take three (3) samples as close to the first customer as possible, at intervals of at least six (6) hours.

(ii) If chlorine is used to maintain a disinfectant residual in the distribution system and there are one (1) or more disinfection addition points after the entrance to the distribution system, for example, booster chlorination, the system shall take one (1) sample at each of the following locations:

(AA) As close to the first customer as possible.

(BB) In a location representative of average residence time.

(CC) As close to the end of the distribution system as possible, reflecting maximum residence time in the distribution system.

(C) Chlorine dioxide monitoring may not be reduced.

(d) Monitoring requirements for disinfection byproduct precursors (DBPP) are as follows:

(1) Routine monitoring is required as follows:

(A) Subpart H systems which use conventional filtration treatment, as defined in 327 IAC 8-2-1, shall monitor each treatment plant for TOC no later than the point of combined filter effluent turbidity monitoring and representative of the treated water.

(B) All systems required to monitor under this subdivision shall also monitor for TOC in the source water prior to any treatment at the same time as monitoring for TOC in the treated water. These samples, source water and treated water, are referred to as paired samples.

(C) At the same time as the source water sample is taken, all systems shall monitor for alkalinity in the source water prior to any treatment.

(D) Systems shall take one (1) paired sample and one (1) source water alkalinity sample per month per plant at a time representative of normal operating conditions and influent water quality.

(2) Subpart H systems with an average treated water TOC of less than two (2.0) milligrams per liter for two (2) consecutive years, or less than one (1.0) milligram per liter for one (1) year, may reduce monitoring for both TOC and alkalinity to one (1) paired sample and one (1) source water alkalinity sample per plant per quarter. The system shall revert to routine monitoring in the month following the quarter when the annual average treated water TOC is greater than or equal to two (2.0) milligrams per liter.

(e) Systems required to analyze for bromate may reduce bromate monitoring from monthly to once per quarter if the system demonstrates that the average source water bromide concentration is less than five-hundredths (0.05) milligram per liter based upon representative monthly measurements for one (1) year. The system shall continue bromide monitoring to remain on reduced bromate monitoring.

(f) Each system required to monitor under this section shall develop and implement a monitoring plan as follows:

(1) The system shall maintain the plan and make it available for inspection by the commissioner and the general public no later than thirty (30) days following the applicable compliance dates in section 4(b) of this rule.

(2) All Subpart H systems serving more than three thousand three hundred (3,300) people shall submit a copy of the monitoring plan to the commissioner no later than the date of the first report required under section 8 of this rule.

(3) The commissioner may also require any other system to submit a monitoring plan.

(4) After review, the commissioner may require changes in any plan elements.

(5) The plan must include at a minimum the following elements:

(A) Specific locations and schedules for collecting samples for any parameters included in this section.

(B) How the system will calculate compliance with MCLs, MRDLs, and treatment techniques.

*40 CFR 141.140 through 141.144 is incorporated by reference and is available for copying at the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board; 327 IAC 8-2.5-6*)

327 IAC 8-2.5-7 Compliance requirements; disinfectants and disinfection byproducts

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2

Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 7. (a) General compliance requirements for disinfectants and disinfection byproducts are as follows:

(1) Where compliance is based on a running annual average of monthly or quarterly samples or averages and the system fails to monitor for TTHM, HAA5, or bromate, this failure to monitor will be treated as a monitoring violation for the entire period covered by the annual average.

(2) Where compliance is based on a running annual average of monthly or quarterly samples or averages and the system's failure to monitor makes it impossible to determine compliance with MRDLs for chlorine and

chloramines, this failure to monitor will be treated as a monitoring violation for the entire period covered by the annual average.

(3) All samples taken and analyzed under the provisions of this rule must be included in determining compliance, even if that number is greater than the minimum required.

(4) If, during the first year of monitoring under section 6 of this rule, any particular quarter's average will cause the running annual average of that system to exceed the MCL, the system is out of compliance at the end of that quarter.

(b) Compliance requirements for disinfection byproducts are as follows:

(1) Compliance requirements for TTHMs and HAA5 are as follows:

(A) For systems monitoring quarterly, compliance with MCLs in section 1(b) of this rule will be based on a running annual arithmetic average, computed quarterly, of quarterly arithmetic averages of all samples collected by the system as prescribed by section 6(b)(1) of this rule.

(B) For systems monitoring less frequently than quarterly, systems demonstrate MCL compliance if the average of samples taken that year under the provisions of section 6(b)(1) of this rule does not exceed the MCLs in section 1 of this rule. If the average of these samples exceeds the MCL, the system shall increase monitoring to once per quarter per treatment plant. Such a system is not in violation of the MCL until it has completed one (1) year of quarterly monitoring, unless the result of fewer than four (4) quarters of monitoring will cause the running annual average to exceed the MCL, in which case the system is in violation at the end of that quarter. Systems required to increase monitoring frequency to quarterly monitoring shall calculate compliance by including the sample that triggered the increased monitoring plus the following three (3) quarters of monitoring.

(C) If the running annual arithmetic average of quarterly averages covering any consecutive four (4) quarter period exceeds the MCL, the system is in violation of the MCL and must notify the public pursuant to 327 IAC 8-2.1-7, in addition to reporting to the commissioner pursuant to section 8 of this rule.

(D) If a public water system fails to complete four (4) consecutive quarters of monitoring, compliance with the MCL for the last four (4) quarter compliance period must be based on an average of the available data.

(2) Compliance requirements for bromate will be based on a running annual arithmetic average, computed quarterly, of monthly samples (or, for months in which the system takes more than one (1) sample, the average of

all samples taken during the month) collected by the system as prescribed by section 6(b)(3) of this rule. If the average of samples covering any consecutive four (4) quarter period exceeds the MCL, the system is in violation of the MCL and shall notify the public pursuant to 327 IAC 8-2.1-7, in addition to reporting to the agency pursuant to section 8 of this rule. If a public water system fails to complete twelve (12) consecutive months of monitoring, compliance with the MCL for the last four (4) quarter compliance period must be based on an average of the available data.

(3) Compliance requirements for chlorite will be based on an arithmetic average of each three (3) sample set taken in the distribution system as prescribed by section 6(b)(2)(A)(ii) and 6(b)(2)(B) of this rule. If the arithmetic average of any three (3) sample sets exceeds the MCL, the system is in violation of the MCL and shall notify the public pursuant to 327 IAC 8-2.1-3 through 327 IAC 8-2.1-17, in addition to reporting to the commissioner pursuant to section 8 of this rule.

(c) Compliance requirements for disinfectant residuals are as follows:

(1) Compliance requirements for chlorine and chloramines are as follows:

(A) Compliance will be based on a running annual arithmetic average, computed quarterly, of monthly averages of all samples collected by the system under section 6(c)(1) of this rule. If the average covering any consecutive four (4) quarter period exceeds the MRDL, the system is in violation of the MRDL and must notify the public pursuant to 327 IAC 8-2.1-7, in addition to reporting to the commissioner pursuant to section 8 of this rule.

(B) Where systems switch between the use of chlorine and chloramines for residual disinfection during the year, compliance must be determined by including all monitoring results of both chlorine and chloramines in calculating compliance. Reports submitted pursuant to section 8 of this rule must clearly indicate which residual disinfectant was analyzed for each sample.

(2) Compliance requirements for chlorine dioxide are as follows:

(A) Compliance requirements for acute violations are as follows:

(i) Compliance will be based on consecutive daily samples collected by the system under section 6(c)(2) of this rule.

(ii) If any daily sample taken at the entrance to the distribution system exceeds the MRDL, and on the following day one (1) or more of the three (3) samples taken in the distribution system exceed the MRDL, the system is in violation of the MRDL and must take immediate corrective action to lower the level of chlorine dioxide below the MRDL, and must notify

Proposed Rules

the public pursuant to the procedures for acute health risks in 327 IAC 8-2.1-3 through 327 IAC 8-2.1-17.

(iii) Failure to take samples in the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system will also be considered an MRDL violation and the system shall notify the public of the violation in accordance with the provisions for acute violations under 327 IAC 8-2.1-7 through 327 IAC 8-2.1-17 in addition to reporting the commissioner pursuant to section 8 of this rule.

(B) Compliance requirements for nonacute violations are as follows:

(i) Compliance will be based on consecutive daily samples collected by the system under section 6(c)(2) of this rule.

(ii) If any two (2) consecutive daily samples taken at the entrance to the distribution system exceed the MRDL and all distribution system samples taken are below the MRDL, the system is in violation of the MRDL and must take corrective action to lower the level of chlorine dioxide below the MRDL at the point of sampling and will notify the public pursuant to the procedures for nonacute health risks in 327 IAC 8-2.1-7 through 327 IAC 8-2.1-17 in addition to reporting to the commissioner pursuant to section 8 of this rule.

(iii) Failure to monitor at the entrance to the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system is also an MRDL violation and the system must notify the public of the violation in accordance with the provisions for nonacute violations under 327 IAC 8-2.1-7 in addition to reporting the commissioner pursuant to section 8 of this rule.

(d) Compliance for disinfection byproduct precursors (DBPP) are as follows:

(1) Compliance will be determined as specified by section 9 of this rule.

(2) Systems may begin monitoring to determine whether Step 1 TOC removals can be met twelve (12) months prior to the compliance date for the system. This monitoring is not required and failure to monitor during this period is not a violation. However, any system that does not monitor during this period, and then determines in the first twelve (12) months after the compliance date that it is not able to meet the Step 1 requirements in section 9(b)(2) of this rule and must therefore apply for alternate minimum TOC removal (Step 2) requirements, is not eligible for retroactive approval of alternate minimum TOC removal (Step 2) requirements as allowed by section 9(b)(3) of this rule, and is in violation.

(3) Systems may apply for alternate minimum TOC removal (Step 2) requirements any time after the compliance date.

(4) For systems required to meet Step 1 TOC removals, if the value calculated under section 9(c)(1)(D) of this rule is less than one (1.00), the system is in violation of the treatment technique requirements and must notify the public pursuant to 327 IAC 8-2.1-17(80)(a) and 327 IAC 8-2.1-17(80)(b), in addition to reporting to the commissioner pursuant to section 8 of this rule.

(Water Pollution Control Board; 327 IAC 8-2.5-7)

327 IAC 8-2.5-8 Reporting and record keeping requirements; disinfectants and disinfection byproducts

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2

Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 8. (a) Systems required to sample quarterly or more frequently shall report to the commissioner within ten (10) days after the end of each quarter in which samples were collected, notwithstanding the provisions of 327 IAC 8-2.1-7. Systems required to sample less frequently than quarterly report to the commissioner within ten (10) days after the end of each monitoring period in which samples were collected.

(b) For disinfection byproducts, systems must report the information specified in the following table:

IF YOU ARE A:	YOU MUST REPORT:
(1) System monitoring for TTHMs and HAA5 under the requirements of section 6(b) of this rule on a quarterly or more frequent basis:	(i) The number of samples taken during the last quarter. (ii) The location, date, and result of each sample taken during the last quarter. (iii) The arithmetic average of all samples taken in the last quarter. (iv) The annual arithmetic average of the quarterly arithmetic averages of this section for the last four (4) quarters. (v) Whether, based on section 7(b)(1) of this rule, the MCL was violated.
(2) System monitoring for TTHMs and HAA5 under the requirements of section 6(b) of this rule less frequently than quarterly (but at least annually):	(i) The number of samples taken during the last year. (ii) The location, date, and result of each sample taken during the last monitoring period. (iii) The arithmetic average of all samples taken over the last year. (iv) Whether, based on section 7(b)(1) of this rule, the MCL was violated.

(3) System monitoring for TTHMs and HAA5 under the requirements of section 6(b) of this rule less frequently than annually:	(i) The location, date, and result of the last sample taken. (ii) Whether, based on section 7(b)(1) of this rule, the MCL was violated.
(4) System monitoring for chlorite under the requirements of section 6(b) of this rule:	(i) The number of entry point samples taken each month for the last three (3) months. (ii) The location, date, and result of each sample (both entry point and distribution system) taken during the last quarter. (iii) For each month in the reporting period, the arithmetic average of all samples taken in each three sample set taken in the distribution system. (iv) Whether, based on section 7(b)(3) of this rule, the MCL was violated, and in which month, and how many times it was violated each month.
(5) System monitoring for bromate under the requirements of section 6(b) of this rule:	(i) The number of samples taken during the last quarter. (ii) The location, date, and result of each sample taken during the last quarter. (iii) The arithmetic average of the monthly arithmetic averages of all samples taken in the last year. (iv) Whether, based on section 7(b)(2) of this rule, the MCL was violated.

(c) For disinfectants, systems shall report the information specified in the following table:

IF YOU ARE A:	YOU MUST REPORT:
(1) System monitoring for chlorine or chloramines under the requirements of section 6(c) of this rule:	(i) The number of samples taken during each month of the last quarter. (ii) The monthly arithmetic average of all samples taken in each month for the last twelve (12) months. (iii) The arithmetic average of all monthly averages for the last twelve (12) months. (iv) Whether, based on section 7(c)(1) of this rule, the MRDL was violated.
(2) System monitoring for chlorine dioxide under the requirements of section 6(c) of this rule:	(i) The dates, results, and locations of samples taken during the last quarter. (ii) Whether, based on section 7(c)(2) of this rule, the MRDL was violated. (iii) Whether the MRDL was exceeded in any two (2) consecutive daily samples and whether the resulting violation was acute or nonacute.

(d) For disinfection byproduct precursors and enhanced coagulation or enhanced softening, systems shall report the information specified in the following table:

IF YOU ARE A:	YOU MUST REPORT:
(1) System monitoring monthly or quarterly for TOC under the requirements of section 6(d) of this rule and required to meet the enhanced coagulation or enhanced softening requirements in section 9(b)(2) or 9(b)(3) of this rule:	(i) The number of paired (source water and treated water) samples taken during the last quarter. (ii) The location, date, and results of each paired sample and associated alkalinity taken during the last quarter. (iii) For each month in the reporting period that paired samples were taken, the arithmetic average of the percent reduction of TOC for each paired sample and the required TOC percent removal. (iv) Calculations for determining compliance with the TOC percent removal requirements, as provided in section 9(c)(1) of this rule. (v) Whether the system is in compliance with the enhanced coagulation or enhanced softening percent removal requirements in section 9(b) of this rule for the last four (4) quarters.

Proposed Rules

<p>(2) System monitoring monthly or quarterly for TOC under the requirements of section 6(d) of this rule and meeting one (1) or more of the alternative compliance criteria in section 9(a)(2) or 9(a)(3) of this rule:</p>	<p>(i) The alternative compliance criterion that the system is using. (ii) The number of paired samples taken during the last quarter. (iii) The location, date, and result of each paired sample and associated alkalinity taken during the last quarter. (iv) The running annual arithmetic average based on monthly averages (or quarterly samples) of source water TOC for systems meeting a criterion in section 9(a)(2)(A) or 9(a)(2)(C) of this rule or of treated water TOC for systems meeting the criterion in section 9(a)(2)(B) of this rule. (v) The running annual arithmetic average based on monthly averages (or quarterly samples) of source water SUVA for systems meeting the criterion in section 9(a)(2)(G) of this rule or of treated water SUVA for systems meeting the criterion in section 9(a)(2)(H) of this rule. (vi) The running annual average of source water alkalinity for systems meeting the criterion in section 9(a)(2)(C) of this rule and of treated water alkalinity for systems meeting the criterion in section 9(a)(3)(A) of this rule. (vii) The running annual average for both TTHM and HAA5 for systems meeting the criterion in section 9(a)(2)(C) or 9(a)(2)(F) of this rule. (viii) The running annual average of the amount of magnesium hardness removal (as CaCO₃, in mg/L) for systems meeting the criterion in section 9(a)(3)(B) of this rule. (ix) Whether the system is in compliance with the particular alternative compliance criterion in section 9(a)(2) or 9(a)(3) of this rule.</p>
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(Water Pollution Control Board; 327 IAC 8-2.5-8)

327 IAC 8-2.5-9 Treatment techniques for control of disinfection byproducts precursors

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2
Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 9. (a) Applicability is as follows:

(1) Subpart H systems using conventional filtration treatment shall operate with enhanced coagulation or enhanced softening to achieve the TOC percent removal levels specified in subsection (b) unless the system meets at least one (1) of the alternative compliance criteria listed in subdivision (2) or (3).

(2) Subpart H systems using conventional filtration treatment may use one (1) or all of the following alternative compliance criteria to comply with this section in lieu of complying with subsection (b):

(A) The system's source water TOC level, measured according to section 5(d)(3) of this rule, is less than two (2.0) milligrams per liter, calculated quarterly as a running annual average.

(B) The system's treated water TOC level, measured according to section 5(d)(3) of this rule, is less than two (2.0) milligrams per liter, calculated quarterly as a running annual average.

(C) The system's source water TOC level, measured according to section 5(d)(3) of this rule is less than four (4.0) milligrams per liter, calculated quarterly as a running annual average and the following are met:

(i) The source water alkalinity, measured according to section 5(d)(1) of this rule, is greater than sixty (60)

milligrams per liter (as CaCO₃), calculated quarterly as a running annual average.

(ii) Either of the following:

(AA) The TTHM and HAA5 running annual averages are no greater than forty-thousandths (0.040) milligram per liter and thirty-thousandths (0.030) milligram per liter, respectively; or

(BB) Prior to the effective date for compliance in section 4(b) of this rule, the system has made a clear and irrevocable financial commitment not later than the effective date for compliance in section 4(b) of this rule to use technologies that will limit the levels of TTHMs and HAA5 to no more than forty-thousandths (0.040) milligram per liter and thirty-thousandths (0.030) milligram per liter, respectively. Systems shall submit evidence of a clear and irrevocable financial commitment, in addition to a schedule containing milestones and periodic progress reports for installation and operation of appropriate technologies, to the agency for approval not later than the effective date for compliance in section 4(b) of this rule. These technologies must be installed and operating not later than June 30, 2005.

(D) The TTHM and HAA5 running annual averages are no greater than forty-thousandths (0.040) milligram per liter and thirty-thousandths (0.030) milligram per liter, respectively, and the system uses only chlorine for primary disinfection and maintenance of a residual in the distribution system.

(E) The system's source water SUVA, prior to any treatment and measured monthly according to section 5(d)(4) of this rule, is less than or equal to two (2.0) liters per milligram meter, calculated quarterly as a running annual average.

(F) The system's finished water SUVA, measured monthly according to section 5(d)(4) of this rule, is less than or equal to two (2.0) liters per milligram meter, calculated quarterly as a running annual average.

(3) Systems practicing enhanced softening that cannot achieve the TOC removals required by subdivision (b)(2) may use the following alternative compliance criteria in lieu of complying with subsection (b):

(A) Softening that results in lowering the treated water alkalinity to less than sixty (60) milligrams per liter (as CaCO_3), measured monthly according to section 5(d)(1) of this rule and calculated quarterly as a running annual average.

(B) Softening that results in removing at least ten (10) milligrams per liter of magnesium hardness (as CaCO_3), measured monthly and calculated quarterly as an annual running average.

Systems shall comply with monitoring requirements in section 6(d) of this rule.

(b) Enhanced coagulation and enhanced softening performance requirements are as follows:

(1) Systems shall achieve the percent reduction of TOC specified in subdivision (2) between the source water and the combined filter effluent unless the commissioner approves a system's request for alternate minimum TOC removal (Step 2) requirements under subdivision (3).

(2) Required Step 1 TOC reductions, indicated in the following table, are based upon specified source water parameters measured in accordance with section 6(d) of this rule. Systems practicing softening are required to meet the Step 1 TOC reductions in the far-right column (Source water alkalinity greater than one hundred twenty (120) milligrams per liter) for the specified source water TOC:

Step 1 Required Removal of TOC by Enhanced Coagulation and Enhanced Softening for Subpart H Systems Using Conventional Treatment^{1,2}

Source-Water TOC, mg/L	Source-Water Alkalinity, mg/L as CaCO_3		
	0-60 (percent)	>60-120 (percent)	>120 ³ (percent)
>2.0-4.0	35.0%	25.0%	15.0%
>4.0-8.0	45.0%	35.0%	25.0%
>8.0	50.0%	40.0%	30.0%

¹Systems meeting at least one (1) of the conditions in subsection (a)(2) are not required to operate with enhanced coagulation.

²Softening systems meeting one (1) of the alternative compliance criteria in subsection (a)(3) are not required to operate with enhanced softening.

³Systems practicing softening shall meet the TOC removal requirements in this column.

(3) Subpart H conventional treatment systems that cannot achieve the Step 1 TOC removals required by subdivision (2) due to water quality parameters or operational constraints shall apply to the commissioner, within three (3) months of failure to achieve the TOC removals required by subdivision (2), for approval of alternative minimum TOC (Step 2) removal requirements submitted by the system as provided by subdivision (4). If the commissioner approves the alternative minimum TOC removal (Step 2) requirements, the commissioner may make those requirements retroactive for the purposes of determining compliance. Until the commissioner approves the alternate minimum TOC removal (Step 2) requirements, the system shall meet the Step 1 TOC removals contained in subdivision (2).

(4) Alternate minimum TOC removal (Step 2) requirements are as follows:

(A) Applications made to the commissioner by enhanced coagulation systems for approval of alternate minimum TOC removal (Step 2) requirements under subdivision (3) must include, at a minimum, results of bench-scale or pilot-scale testing conducted under clause (C). The submitted bench-scale or pilot-scale testing will be used to determine the alternate enhanced coagulation level.

(B) As used in this subdivision, "alternate enhanced coagulation level" means coagulation at a coagulant dose and pH as determined by the method described in clauses (A) through (E) such that an incremental addition of ten (10) milligrams per liter of alum (or equivalent amount of ferric salt) results in a TOC removal of less than or equal to three-tenths (0.3) milligram per liter. The percent removal of TOC at this point on the TOC removal versus coagulant dose curve is defined as the minimum TOC removal required for the system. Once approved by the agency, this minimum requirement supersedes the minimum TOC removal required by the table in subdivision (2). This requirement will be effective until the agency approves a new value based on the results of a new bench-scale and pilot-scale tests. Failure to achieve alternative minimum TOC removal levels is a violation of National Primary Drinking Water Regulations.

(C) Bench-scale or pilot-scale testing of enhanced coagulation must be conducted by using representative water samples and adding ten (10) milligrams per liter increments of alum, or equivalent amounts of ferric salt, until the pH is reduced to a level less than or equal to the enhanced coagulation Step 2 target pH shown in the following table:

Proposed Rules

Enhanced Coagulation Step 2 Target pH

Alkalinity (mg/L as CaCO ₃)	Target pH
0-60	5.5
>60-120	6.3
>120-240	7.0
>240	7.5

(D) For waters with alkalinities of less than sixty (60) milligrams per liter for which the addition of small amounts of alum or equivalent addition of iron coagulant drives the pH below five and five-tenths (5.5) before significant TOC removal occurs, the system shall add necessary chemicals to maintain the pH between five and three-tenths (5.3) and five and seven-tenths (5.7) in samples until the TOC removal of three-tenths (0.3) milligram per liter per ten (10) milligrams per liter alum added, or equivalent addition of iron coagulant, is reached.

(E) The system may operate at any coagulant dose or pH necessary, consistent with other National Primary Drinking Water Regulations, to achieve the minimum TOC percent removal approved under subdivision (3).

(F) If the TOC removal is consistently less than three-tenths (0.3) milligram per liter of TOC per ten (10) milligrams per liter of incremental alum dose at all dosages of alum (or equivalent addition of iron coagulant), the water is deemed to contain TOC not amenable to enhanced coagulation. The system may then apply to the commissioner for a waiver of enhanced coagulation requirements.

(c) Compliance calculations are required as follows:

(1) Subpart H systems other than those identified in subsection (a)(2) or (a)(3) shall comply with requirements contained in subsection (b)(2) or (b)(3). Systems shall calculate compliance quarterly, beginning after the system has collected twelve (12) months of data, by determining an annual average using the following method:

STEP 1: Calculate actual monthly TOC percent removal, which is equal to:

$$(1 - (\text{treated water TOC} / \text{source water TOC})) \times \text{one hundred (100)}.$$

STEP 2: Calculate the required monthly TOC percent removal (from either the table in subsection (b)(2) or from subsection (b)(3)).

STEP 3: Divide the value determined under STEP 1 by the value determined under STEP 2.

STEP 4: Add together the quotients determined under STEP 3 for the last twelve (12) months and divide by twelve (12).

STEP 5: If the quotient calculated in STEP 4 is less than one (1.00), the system is not in compliance with the TOC percent removal requirements.

(2) Systems may use the following provisions in lieu of the

calculations in subdivision (1) to determine compliance with TOC percent removal requirements:

(A) In any month that the system's treated or source water TOC level, measured according to section 5(d)(3) of this rule, is less than two (2.0) milligrams per liter, the system may assign a monthly value of one (1.0) (in lieu of the value calculated in STEP 3 of subdivision (1)) when calculating compliance under subdivision (1).

(B) In any month that a system practicing softening removes at least ten (10) milligrams per liter of magnesium hardness (as CaCO₃), the system may assign a monthly value of one (1.0) (in lieu of the value calculated in STEP 3 of subdivision (1)) when calculating compliance under subdivision (1).

(C) In any month that the system's source water SUVA, prior to any treatment and measured according to section 5(d)(4) of this rule, is less than or equal to two (2.0) liters per milligram meter, the system may assign a monthly value of one (1.0) (in lieu of the value calculated in STEP 3 of subdivision (1)) when calculating compliance under subdivision (1).

(D) In any month that the system's finished water SUVA, measured according to section 5(d)(4) of this rule, is less than or equal to two (2.0) liters per milligram meter, the system may assign a monthly value of one (1.0) (in lieu of the value calculated in STEP 3 of subdivision (1)) when calculating compliance under subdivision (1).

(E) In any month that a system practicing enhanced softening lowers alkalinity below sixty (60) milligrams per liter (as CaCO₃), the system may assign a monthly value of one (1.0) (in lieu of the value calculated in STEP 3 of subdivision (1)) when calculating compliance under subdivision (1).

(3) Subpart H systems using conventional treatment may also comply with the requirements of this section by meeting the criteria in subsection (a)(2) or (a)(3).

(d) The commissioner identifies the following as treatment techniques for Subpart H systems to control the level of disinfection byproduct precursors in drinking water treatment and distribution systems:

- (1) Conventional treatment.
- (2) Enhanced coagulation.
- (3) Enhanced softening.

(Water Pollution Control Board; 327 IAC 8-2.5-9)

SECTION 16. 327 IAC 8-2.6 IS ADDED TO READ AS FOLLOWS:

Rule 2.6. Enhanced Filtration and Disinfection

327 IAC 8-2.6-1 General requirements; enhanced filtration and disinfection

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2

Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 1. (a) Upon the effective date of this rule, unless otherwise specified in this section, all subpart H systems serving a population of at least ten thousand (10,000) individuals shall establish treatment technique requirements in lieu of maximum contaminant levels for the following contaminants:

- (1) *Giardia lamblia*.
- (2) Viruses.
- (3) Heterotrophic plate count bacteria.
- (4) *Legionella*.
- (5) *Cryptosporidium*.
- (6) Turbidity.

The systems shall also provide treatment of their source water that complies with these treatment technique requirements in addition to those identified in 327 IAC 8-2-8.5.

(b) The treatment technique requirements consist of installing and properly operating water treatment processes that reliably achieve the following:

- (1) At least ninety-nine percent (99%) (2-log) removal of *Cryptosporidium* between a point where the raw water is not subject to recontamination by surface water run-off and a point downstream before or at the first customer for filtered systems, or *Cryptosporidium* control under the water shed control plan for unfiltered systems.
- (2) Compliance with the profiling and benchmark requirements under section 2 of this rule.

(c) A public water system subject to the requirements of this section is considered to be in compliance with the requirements of subsections (a) and (b) if it meets the:

- (1) disinfection requirements in 327 IAC 8-2-8.6 and section 2 of this rule; or
- (2) applicable filtration requirements in either 327 IAC 8-2-8.5 or section 3 of this rule and the disinfection requirements in 327 IAC 8-2-8.6 and section 2 of this rule.

(d) Subpart H systems serving a population of greater than ten thousand (10,000) are not permitted to begin construction of uncovered finished water storage facilities after the effective date of this rule. (*Water Pollution Control Board; 327 IAC 8-2.6-1*)

327 IAC 8-2.6-2 Disinfection profiling and benchmarking

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2
 Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 2. (a) A public water system subject to the requirements of this section shall meet the following monitoring requirements to determine its TTHM annual average and its HAA5 annual average. A public water system will determine its TTHM annual average using the procedure in subdivision (1) and its HAA5 annual average using the procedure in subdivision (2). The annual average is the arithmetic average of the quarterly averages of four (4) consecutive quarters of monitoring.

(1) The TTHM annual average must be the annual average during the same period as is used for the HAA5 annual average. Those subpart H systems serving a population of greater than ten thousand (10,000) individuals that:

- (A) collected data under 40 CFR 141* must use the results of the samples collected during the last four (4) quarters of required monitoring under 40 CFR 141.142*;
- (B) use grandfathered HAA5 occurrence data that meet the provisions of subdivision (2)(B) must use the TTHM data collected at the same time under 327 IAC 8-2-5(a) and 327 IAC 8-2-5.3; and
- (C) use HAA5 occurrence data that meet the provisions of subdivision (2)(C)(i) must use the TTHM data collected at the same time under 327 IAC 8-2-5(a) and 327 IAC 8-2-5.3.

(2) The HAA5 annual average must be the annual average during the same period as is used for the TTHM annual average. Those subpart H systems serving a population of greater than ten thousand (10,000) individuals that:

- (A) collected data under 40 CFR 141* must use the results of the samples collected during the last four (4) quarters of required monitoring under 40 CFR 141.142*;
- (B) have collected four (4) quarters of HAA5 occurrence data that meets the routine monitoring sample number and location requirements for TTHM in 327 IAC 8-2-5(a) and 327 IAC 8-2-5.3 and handling and analytical method requirements of 40 CFR 141.142(b)(1)* may use those data to determine whether the requirements of this section apply; and
- (C) have not collected four (4) quarters of HAA5 occurrence data that meets the provisions of either clause (A) or (B) by March 16, 1999, must either:
 - (i) conduct monitoring for HAA5 that meets the routine monitoring sample number and location requirements for TTHM in 327 IAC 8-2-5(a), 327 IAC 8-2-5.3, and handling and analytical method requirements of 40 CFR 141.142(b)(1)* to determine the HAA5 annual average and whether the requirements of subsection (b) apply. This monitoring must be completed so that the applicability determination can be made no later than March 31, 2000; or
 - (ii) comply with all other provisions of this section as if the HAA5 monitoring had been conducted and the results required compliance with subsection (b).

(3) Subpart H systems serving a population of greater than ten thousand (10,000) individuals may request that the commissioner approve a more representative annual data set than the data set determined under subdivision (1) or (2) for the purpose of determining applicability of the requirements of this section.

(4) The commissioner may require that a system use a

more representative annual data set than the data set determined under subdivision (1) or (2) for the purpose of determining applicability of the requirements of this section.

(5) Subpart H systems serving a population of greater than ten thousand (10,000) individuals shall submit data to the commissioner based on the following schedules:

(A) Those subpart H systems serving a population of greater than ten thousand (10,000) individuals that collected TTHM and HAA5 data under 40 CFR 141*, as required by subdivisions (1)(A) and (2)(A), shall submit the results of the samples collected during the last twelve (12) months of monitoring required under 40 CFR 141.142* not later than December 31, 1999.

(B) Those subpart H systems serving a population of greater than ten thousand (10,000) individuals that have collected four (4) consecutive quarters of HAA5 occurrence data that meets the routine monitoring sample number and location for TTHM in 327 IAC 8-2-5(a), 327 IAC 8-2-5.3, and handling and analytical method requirements of 40 CFR 141.142(b)(1)*, as allowed by subdivisions (1)(B) and (2)(B), must submit those data to the commissioner not later than April 15, 1999. Until the commissioner has approved the data, the system shall conduct monitoring for HAA5 using the monitoring requirements specified under subdivision (2)(C).

(C) Subpart H systems serving a population of greater than ten thousand (10,000) individuals that conduct monitoring for HAA5 using the monitoring requirements specified by subdivision (2)(C)(i), shall submit TTHM and HAA5 data not later than March 31, 2000.

(D) Those systems that elect to comply with all other provisions of this section as if the HAA5 monitoring had been conducted and the results required compliance with this section, as allowed under subdivision (2)(C)(ii), shall notify the commissioner in writing of their election not later than December 31, 1999.

(E) If the system elects to represent that the commissioner approve a more representative annual data set than the data set determined under subdivision (2)(A), the system must submit this request in writing not later than December 31, 1999.

(6) Any subpart H systems serving a population of greater than ten thousand (10,000) individuals having either a TTHM annual average greater than or equal to sixty-four thousandths (0.064) milligram per liter or an HAA5 annual average greater than or equal to forty-eight thousandths (0.048) milligram per liter during the period identified in subdivisions (1) and (2) shall comply with subsection (b).

(b) Disinfection profiling requirements are as follows:

(1) Any subpart H system serving a population of greater than ten thousand (10,000) individuals that meets the

criteria in subsection (a)(6) shall develop a disinfection profile of its disinfection practice for a period of up to three (3) years.

(2) Not later than April 1, 2000, subpart H systems serving a population of greater than ten thousand (10,000) individuals shall monitor daily for a period of twelve (12) consecutive calendar months to determine the total logs of inactivation for each day of operation based on the CT99.9 values in Tables 1.1 through 1.6, 2.1, and 3.1 of 40 CFR 141.74(b)*, as appropriate, through the entire treatment plant. At a minimum, subpart H systems serving a population of greater than ten thousand (10,000) individuals with a single or multiple point of disinfectant application prior to entrance to the distribution system shall conduct the monitoring in clauses (A) through (D) for each disinfection segment. The system shall monitor the parameters necessary to determine the total inactivation ratio using analytical methods in 327 IAC 8-2-8.7 as follows:

(A) The temperature of the disinfection water shall be measured one (1) time per day at each residual disinfectant concentration sampling point during peak hourly flow.

(B) If the system uses chlorine, the pH of the disinfected water shall be measured one (1) time per day at each chlorine residual disinfectant concentration sampling point during peak hourly flow.

(C) The disinfectant contact time (T) shall be determined for each day during peak hourly flow.

(D) The residual disinfectant concentration (C) of the water before or at the first customer and prior to each additional point of disinfection shall be measured each day during peak hourly flow.

(3) In lieu of the monitoring conducted under subdivision (2) to develop the disinfection profile, subpart H systems serving a population of greater than ten thousand (10,000) individuals may elect to meet either of the following requirements:

(A) Not later than March 31, 2000, subpart H systems serving a population of greater than ten thousand (10,000) individuals that has three (3) years of existing operational data may submit those data, a profile generated using those data, and a request that the commissioner approve use of those data in lieu of monitoring under subdivision (2). The commissioner shall determine whether these operational data are substantially equivalent to data collected under subdivision (2) and whether these data are representative of *Giardia lamblia* inactivation through the entire treatment plant and not just of certain treatment segments. Until the commissioner approves this request, the system is required to conduct monitoring under subdivision (2).

(B) In addition to the disinfection profile generated under subdivision (2), subpart H systems serving a population of greater than ten thousand (10,000) individuals that has existing operational data may use

those data to develop a disinfection profile for additional years. Subpart H systems serving a population of greater than ten thousand (10,000) may use these additional yearly disinfection profiles to develop a benchmark under subsection (c). The commissioner shall determine whether these operational data are substantially equivalent to data collected under subdivision (2). These data must also be representative of inactivation through the entire treatment plant and not just of certain treatment segments.

(4) Subpart H systems serving a population of greater than ten thousand (10,000) individuals shall calculate the total inactivation ratio as follows:

(A) If the system uses only one (1) point of disinfectant application, the system may determine the total inactivation ratio for the disinfection segment by using either of the following methods:

- (i) Determine one (1) inactivation ratio ($CT_{calc}/CT_{99.9}$) before or at the first customer during peak hourly flow.
- (ii) Determine successive $CT_{calc}/CT_{99.9}$ values, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow. Under this alternative, the system must calculate the total inactivation ratio by determining ($CT_{calc}/CT_{99.9}$) for each sequence and then adding the ($CT_{calc}/CT_{99.9}$) values together to determine ($\Sigma (CT_{calc}/CT_{99.9})$).

(B) Subpart H systems serving a population of greater than ten thousand (10,000) individuals that use more than one (1) point of disinfectant application before the first customer shall determine the CT value of each disinfection segment immediately prior to the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow. The ($CT_{calc}/CT_{99.9}$) value of each segment and ($\Sigma (CT_{calc}/CT_{99.9})$) shall be calculated using the method in clause (A).

(C) Subpart H systems serving a population of greater than ten thousand (10,000) individuals shall determine the total logs of inactivation by multiplying the value calculated in clause (A) or (B) by three (3.0).

(5) Subpart H systems serving a population of greater than ten thousand (10,000) individuals that use either chloramines or ozone for primary disinfection shall also calculate the logs of inactivation for viruses using a method approved by the commissioner.

(6) Subpart H systems serving a population of greater than ten thousand (10,000) individuals shall retain disinfection profile data in graphic form, as a spreadsheet, or in some other format acceptable to the commissioner for review as part of sanitary surveys conducted by the commissioner.

(c) Disinfection benchmarking requirements are as follows:

(1) A Subpart H system serving a population of greater than ten thousand (10,000) individuals required to develop a disinfection profile under subsections (a) and (b) that decides to make a significant change to its disinfection practice shall consult with the commissioner prior to making such change. As used in this subdivision, "significant changes" means the following:

- (A) Changes to the point of disinfection.
- (B) Changes to the disinfectants used in the treatment plant.
- (C) Changes to the disinfection process.
- (D) Any other modification identified by the commissioner.

(2) A subpart H system serving a population of greater than ten thousand (10,000) individuals that is modifying its disinfection practice shall calculate its disinfection benchmark using the following procedures:

(A) Subpart H systems serving a population of greater than ten thousand (10,000) individuals shall determine the lowest average monthly *Giardia lamblia* inactivation for each year of profiling data collected and calculated under subsection (b). The system shall determine the average *Giardia lamblia* inactivation for each calendar month for each year of profiling data by dividing the sum of daily *Giardia lamblia* inactivation by the number of values calculated for that month.

(B) The disinfection benchmark is the lowest monthly average value (for subpart H systems serving a population of greater than ten thousand (10,000) with one (1) year of profiling data) or average of lowest monthly average values (for subpart H systems serving a population of greater than ten thousand (10,000) individuals with more than one (1) year of profiling data) of the monthly logs of *Giardia lamblia* inactivation for each year of profiling data.

(C) Subpart H systems serving a population of greater than ten thousand (10,000) individuals that use either chloramines or ozone for primary disinfection shall also calculate the disinfection benchmark for viruses using a method approved by the commissioner.

(D) The system shall submit the following information to the commissioner as part of its consultation process:

- (i) A description of the proposed change in disinfection practice.
- (ii) The disinfection profile for *Giardia lamblia* (and, if necessary, viruses) under subsection (b) and benchmark as required by this subsection.
- (iii) An analysis of how the proposed change will affect the current levels of disinfection.

*40 CFR 141, 40 CFR 141.142, 40 CFR 141.142(b)(1), and 40 CFR 141.74(b) are incorporated by reference and are available for copying at the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. (*Water Pollution Control Board*; 327 IAC 8-2.6-2)

327 IAC 8-2.6-3 Enhanced filtration

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2
Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 3. By December 31, 2001, subpart H systems serving a population of greater than ten thousand (10,000) individuals shall provide treatment consisting of both disinfection, as specified in 327 IAC 8-2-8.6, and filtration treatment that complies with the following:

(1) Requirements for systems using conventional filtration or direct filtration are as follows:

(A) For Subpart H systems serving a population of greater than ten thousand (10,000) individuals using conventional filtration or direct filtration, the turbidity level of representative samples of the system's filtered water must be less than or equal to three-tenths (0.3) nephelometric turbidity unit in at least ninety-five percent (95%) of the measurements taken each month, measured as specified in 327 IAC 8-2-8.7 and 327 IAC 8-2-8.8.

(B) The turbidity level of representative samples of the system's filtered water must at no time exceed one (1) nephelometric turbidity unit, measured as specified in 327 IAC 8-2-8.7 and 327 IAC 8-2-8.8.

(C) A system that uses lime softening may acidify representative samples prior to analysis using a protocol approved by the commissioner.

(2) A Subpart H system serving a population greater than ten thousand (10,000) may use filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration if it demonstrates to the commissioner, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of 327 IAC 8-2-8.6, consistently achieves ninety-nine and nine-tenths percent (99.9%) removal or inactivation of *Giardia lamblia* cysts and ninety-nine and ninety-nine hundredths percent (99.99%) removal or inactivation of viruses, and ninety-nine percent (99%) removal of *Cryptosporidium* oocysts, and the commissioner approves the use of the filtration technology.

(3) For each approval under subdivision (2), the commissioner will set turbidity performance requirements that the system must meet at least ninety-five percent (95%) of the time and that the system may not exceed at any time at a level that consistently achieves ninety-nine and nine-tenths percent (99.9%) removal or inactivation of *Giardia lamblia* cysts, ninety-nine and ninety-nine hundredths percent (99.99%) removal or inactivation of viruses, and ninety-nine percent (99%) removal of *Cryptosporidium* oocysts.

(Water Pollution Control Board; 327 IAC 8-2.6-3)

327 IAC 8-2.6-4 Filtration sampling requirements

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2
Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 4. (a) In addition to monitoring required by 327 IAC 8-2-8.7, a Subpart H system serving a population of greater than ten thousand (10,000) individuals that provides conventional filtration treatment or direct filtration shall comply with the following:

(1) Conduct continuous monitoring of turbidity for each individual filter using an approved method in 327 IAC 8-2-8.7.

(2) Calibrate turbidimeters using the procedure specified by the manufacturer.

(3) Record the results of individual filter monitoring every fifteen (15) minutes.

(b) If there is a failure in the continuous turbidity monitoring equipment, Subpart H systems serving a population of greater than ten thousand (10,000) individuals must conduct grab sampling every four (4) hours in lieu of continuous monitoring, but for no more than five (5) working days following the failure of the equipment. *(Water Pollution Control Board; 327 IAC 8-2.6-4)*

327 IAC 8-2.6-5 Enhanced filtration and disinfection reporting and record keeping requirements

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2
Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 5. Beginning January 1, 2002, a Subpart H system serving a population of greater than ten thousand (10,000) individuals that is subject to the requirements of section 3 of this rule and provides conventional filtration treatment or direct filtration shall meet the following requirements in addition to the reporting and record keeping requirements in 327 IAC 8-2-14:

(1) Turbidity measurements as required by section 3 of this rule shall be reported within ten (10) days after the end of each month the system serves water to the public. Information that shall be reported includes the following:

(A) The total number of filtered water turbidity measurements taken during the month.

(B) The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to the turbidity limits specified in section 3 of this rule.

(C) The date and value of any turbidity measurements taken during the month that exceed:

(i) one and zero-tenths (1.0) nephelometric turbidity unit for systems using conventional filtration treatment or direct filtration; or

(ii) the maximum level set by the commissioner under section 3 of this rule. This reporting requirement is in lieu of the reporting specified in 327 IAC 8-2-14(b).

(2) Subpart H systems serving a population of greater than ten thousand (10,000) individuals shall maintain the results of individual filter monitoring taken under section

4 of this rule for at least three (3) years. These systems shall report that they have conducted individual filter turbidity monitoring under section 3 of this rule within ten (10) days after the end of each month they serve water to the public if measurements demonstrate one (1) or more of the following conditions:

(A) For any individual filter that has a measured turbidity level of greater than one and zero-tenths (1.0) nephelometric turbidity unit in two (2) consecutive measurements taken fifteen (15) minutes apart, Subpart H systems serving a population of greater than ten thousand (10,000) individuals shall report the filter number, the turbidity measurement, and the date on which the exceedance occurred. In addition, the system shall either produce a filter profile for the filter within seven (7) days of the exceedance, if the system is not able to identify an obvious reason for the abnormal filter performance, and report that the profile has been produced or report the obvious reason for the exceedance.

(B) For any individual filter that has a measured turbidity level of greater than five-tenths (0.5) in two (2) consecutive measurements taken fifteen (15) minutes apart at the end of the first four (4) hours of continuous filter operation after the filter has been backwashed or otherwise taken off-line, Subpart H systems serving a population of greater than ten thousand (10,000) individuals shall report the filter number, the turbidity, and the date on which the exceedance occurred. In addition, the system shall either produce a filter profile for the filter within seven (7) days of the exceedance, if the system is not able to identify an obvious reason for the abnormal filter performance, and report that the profile has been produced or report the obvious reason for the exceedance.

(C) For any individual filter that has a measured turbidity level of greater than one and zero-tenths (1.0) nephelometric turbidity unit in two (2) consecutive measurements taken fifteen (15) minutes apart at any time in each of three (3) consecutive months, Subpart H systems serving a population of greater than ten thousand (10,000) shall report the filter number, the turbidity measurement, and the date on which the exceedance occurred. In addition, the system shall conduct a self-assessment of the filter within fourteen (14) days of the exceedance and report that the self-assessment was conducted. The self-assessment shall consist of at least the following components:

- (i) Assessment of filter performance.
 - (ii) Development of a filter profile.
 - (iii) Identification and prioritization of factors limiting filter performance.
 - (iv) Assessment of the applicability of corrections.
 - (v) Preparation of a filter self-assessment report.
- (D) For any individual filter that has a measured

turbidity level of greater than two and zero-tenths (2.0) nephelometric turbidity units in two (2) consecutive measurements taken fifteen (15) minutes apart at any time in each of two (2) consecutive months, Subpart H systems serving a population of greater than ten thousand (10,000) individuals shall report the filter number, the turbidity measurement, and the date on which the exceedance occurred. In addition, the system shall arrange for the conduct of a comprehensive performance evaluation by the commissioner or a third party approved by the commissioner no later than thirty (30) days following the exceedance and have the evaluation completed and submitted to the commissioner no later than ninety (90) days following the exceedance.

(3) Additional reporting requirements are as follows:

(A) If at any time the turbidity exceeds one and zero-tenths (1.0) nephelometric turbidity unit in representative samples of filtered water in a Subpart H system serving a population of greater than ten thousand (10,000) individuals using conventional filtration treatment or direct filtration, the system shall inform the commissioner as soon as possible, but no later than the end of the next business day.

(B) If at any time the turbidity in representative samples of filtered water exceeds the maximum level set by the commissioner under section 3 of this rule for filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration, Subpart H systems serving a population of greater than ten thousand (10,000) individuals shall inform the commissioner as soon as possible, but no later than the end of the next business day.

Systems that use lime softening may apply to the commissioner for alternative exceedance levels for the levels specified in subdivision (2) and this subdivision if they can demonstrate that higher turbidity levels in individual filters are due to lime carryover only and not due to degraded filter performance.

(Water Pollution Control Board; 327 IAC 8-2.6-5)

327 IAC 8-2.6-6 Filter backwash

Authority: IC 13-13-5-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-18-3-2

Affected: IC 13-12-3-1; IC 13-13-5-2; IC 13-14-9; IC 13-18-11

Sec. 6. All Subpart H systems that employ conventional filtration or direct filtration treatment and recycle spent filter backwash water, thickener supernatant, or liquids from dewatering processes shall meet the following requirements:

(1) A system shall notify the commissioner in writing by December 8, 2003, if the system recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes. This notification shall include, at a minimum, the following information:

(A) A plant schematic showing:

- (i) the origin of all flows which are recycled, including, but not limited to, spent filter backwash water, thickener supernatant, and liquids from dewatering processes;**
- (ii) the hydraulic conveyance used to transport the spent filter backwash water, thickener supernatant, and liquids from dewatering processes; and**
- (iii) the location where spent filter backwash water, thickener supernatant, and liquids from dewatering processes are reintroduced back into the treatment plant.**

(B) Typical recycle flow in gallons per minute.

(C) The highest observed plant flow experienced in the previous year in gallons per minute.

(D) Design flow for the treatment plant in gallons per minute.

(E) Commissioner-approved operating capacity for the plant where the commissioner has made such determinations.

(2) Any system that recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes shall return these flows through the processes of a system's existing conventional or direct filtration system as defined in 327 IAC 8-2-1(14) and 327 IAC 8-2-1(18), or at an alternate location approved by the commissioner by June 8, 2004. If capital improvements are required to modify the recycle location to meet the requirement in this subdivision, all capital improvements shall be completed no later than June 8, 2006.

(3) Subpart H systems shall collect and retain on file the following recycle flow information on forms provided by the department for review and evaluation by the commissioner beginning June 8, 2004:

(A) Copy of the recycle notification and information submitted to the commissioner under subdivision (1)(B) through (1)(E).

(B) List of all recycle flows and the frequency with which they are returned.

(C) Average and maximum backwash flow rate through the filters and the average and maximum duration of the filter backwash process in minutes.

(D) Typical filter run length and a written summary of how filter run length is determined.

(E) The type of treatment provided for the recycle flow.

(F) Data on the physical dimensions of the equalization and treatment units, typical and maximum hydraulic loading rates, type of treatment chemicals used and average dose and frequency of use, and frequency at which solids are removed, if applicable.

(Water Pollution Control Board; 327 IAC 8-2.6-6)

SECTION 17. THE FOLLOWING ARE REPEALED: 327 IAC 8-2-6; 327 IAC 8-2-29.

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on November 13, 2002 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Water Pollution Control Board will hold a public hearing on proposed amendments to 327 IAC 8-2 and 327 IAC 8-2.1 and new rules 327 IAC 8-2.5 and 327 IAC 8-2.6. The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments and new rules. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Megan Wallace, Rules Section, Office of Water Quality, (317) 233-8669 or (800) 451-6027 (in Indiana). Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator

Indiana Department of Environmental Management

100 North Senate Avenue

P.O. Box 6015

Indianapolis, Indiana 46206-6015

or call (317) 233-0855. (TDD): (317) 232-6565. Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Twelfth Floor West and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Tim Method

Deputy Commissioner

Office of Water Quality

TITLE 370 STATE EGG BOARD

Proposed Rule

LSA Document #01-419

DIGEST

Amends 370 IAC 1 concerning requirements for processing, transportation, and consumer container identification for shell eggs, including updating matters incorporated by reference. Adds a requirement for safe handling instructions for egg cartons. Makes other substantive and technical changes. Effective 30 days after filing with the secretary of state.

370 IAC 1-1-1 370 IAC 1-3-4
 370 IAC 1-1-2 370 IAC 1-4-1
 370 IAC 1-1-3 370 IAC 1-4-2
 370 IAC 1-1-4 370 IAC 1-4-3
 370 IAC 1-1-5 370 IAC 1-5-1
 370 IAC 1-2-1 370 IAC 1-6-1
 370 IAC 1-2-2 370 IAC 1-8-1
 370 IAC 1-2-3 370 IAC 1-9-1
 370 IAC 1-3-1 370 IAC 1-10-1
 370 IAC 1-3-2 370 IAC 1-10-2
 370 IAC 1-3-3

SECTION 1. 370 IAC 1-1-1 IS AMENDED TO READ AS FOLLOWS:

370 IAC 1-1-1 Applicability of state standards

Authority: IC 16-42-11-5
 Affected: IC 16-42-11-5

Sec. 1. The official Indiana standards for the quality of shell eggs contained in this ~~subpart rule~~ are applicable only to eggs that are the product of the domesticated chicken hen and are in the shell. (*State Egg Board; Reg 1, Title I, Sec 1; filed Aug 14, 1973, 1:30 p.m.: Rules and Regs. 1974, p. 81; readopted filed Nov 7, 2001, 3:22 p.m.: 25 IR 937*)

SECTION 2. 370 IAC 1-1-2 IS AMENDED TO READ AS FOLLOWS:

370 IAC 1-1-2 Applicability of state standards to interstate or foreign commerce

Authority: IC 16-42-11-5
 Affected: IC 16-42-11-5

Sec. 2. ~~U. S. Public Law 91-597 91st Congress H. R., 1988, December 29, 1970 The Egg Products Inspection Act (21 U.S.C. 1031 through 21 U.S.C. 1056) provide, Sec. 23, (b) "For eggs which have moved or are moving in interstate or foreign commerce, (1) no State or local jurisdiction may require the use of standards of quality, condition, weight, quantity, or grade which are in addition to or different from the official Federal standards, (2) with respect to egg handlers specified in paragraphs (1) and (2) of section 5(e), no State or local jurisdiction may impose temperature requirements pertaining to eggs packaged for the ultimate consumer which are in addition to, or different from, federal requirements, and (3) no state or local jurisdiction other than those in noncontiguous areas of the United States may require labeling to show the state or other geographical area of production or origin: Provided, however, that this shall not preclude a state from requiring that the name, address, and license number of the person processing or packaging eggs, be shown on each container."~~ (*State Egg Board; Reg 1, Title I, Sec 2; filed Aug 14, 1973, 1:30 p.m.: Rules and Regs. 1974, p. 82; readopted filed Nov 7, 2001, 3:22 p.m.: 25 IR 937*)

SECTION 3. 370 IAC 1-1-3 IS AMENDED TO READ AS FOLLOWS:

370 IAC 1-1-3 Uniform grade standards; adoption of federal standards

Authority: IC 16-42-11-5
 Affected: IC 16-42-11-5

Sec. 3. Therefore in the interest of maintaining uniform grade standards in ~~the State of Indiana~~, the state egg board hereby adopts the ~~U.S.~~ **United States** Standards, Grades, and Weight Classes for Shell Eggs promulgated by the ~~U.S.~~ **United States** Department of Agriculture (~~7 CFR Part (AMS 56)~~ as the official standards for quality, grade, and weight classes for ~~the State of Indiana~~, including (~~7 CFR Part 59) 57~~) Regulations Governing the Inspection of Eggs. ~~and Egg Products. (State Egg Board; Reg 1, Title I, Sec 3; filed Aug 14, 1973, 1:30 p.m.: Rules and Regs. 1974, p. 82; filed Nov 23, 1981, 9:30 a.m.: 5 IR 33, eff Jan 1, 1982; errata, 9 IR 779; readopted filed Nov 7, 2001, 3:22 p.m.: 25 IR 937)~~

SECTION 4. 370 IAC 1-1-4 IS AMENDED TO READ AS FOLLOWS:

370 IAC 1-1-4 Candling; Haugh unit value

Authority: IC 16-42-11-5
 Affected: IC 16-42-11-5

Sec. 4. ~~Candling.~~ Interior egg quality specifications for ~~these standards this section~~ are based on the apparent condition of the interior contents of the egg as it is twirled before the candling light. Any type or make of candling light may be used that will enable consistently accurate determination of the interior quality of shell eggs. It is desirable to break out an occasional egg and to determine the Haugh unit value of the broken out and candled appearance thereby aiding in correlating candled and broken out appearance. (*State Egg Board; Reg 1, Title II, Sec 1; filed Aug 14, 1973, 1:30 p.m.: Rules and Regs. 1974, p. 82; filed Nov 23, 1981, 9:30 a.m.: 5 IR 33, eff Jan 1, 1982; readopted filed Nov 7, 2001, 3:22 p.m.: 25 IR 937*)

SECTION 5. 370 IAC 1-1-5 IS AMENDED TO READ AS FOLLOWS:

370 IAC 1-1-5 Haugh measurements

Authority: IC 16-42-11-5
 Affected: IC 16-42-11-5

Sec. 5. ~~Haugh Measurements.~~ Specifications for measuring the thick albumen condition is based on the use of a specially designed micrometer or slide rule to determine the relationship between the weight of an egg and the height of the thick white. The readings are taken in units ranging from **zero (0) to one hundred (100)** after the egg has been broken out on a flat ~~glass~~ surface. (*State Egg Board; Reg 1, Title II, Sec 2; filed Aug 14, 1973, 1:30 p.m.: Rules and Regs. 1974, p. 82; readopted filed Nov 7, 2001, 3:22 p.m.: 25 IR 937*)

Proposed Rules

SECTION 6. 370 IAC 1-2-1 IS AMENDED TO READ AS FOLLOWS:

370 IAC 1-2-1 Temperature requirements; dealer facilities

Authority: IC 16-42-11-5

Affected: IC 16-42-11

Sec. 1. Every registered person, partnership, firm, or corporation permitted to handle or sell eggs under the provisions of ~~IC 16-42-11~~ **IC 16-42-11** shall, upon delivery, provide adequate space and storage facilities to hold shell eggs at an ambient temperature of forty-five (45) degrees Fahrenheit (~~45°F~~) or below. (*State Egg Board; Reg 2, Title I, Sec 1; filed Aug 14, 1973, 1:30 p.m.: Rules and Regs. 1974, p. 82; filed Nov 23, 1981, 9:30 a.m.: 5 IR 33, eff Jan 1, 1982; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1775; readopted filed Nov 7, 2001, 3:22 p.m.: 25 IR 937*)

SECTION 7. 370 IAC 1-2-2 IS AMENDED TO READ AS FOLLOWS:

370 IAC 1-2-2 Temperature requirements; retail stores

Authority: IC 16-42-11-5

Affected: IC 16-42-11-5

Sec. 2. Upon delivery, shell eggs at the retail store shall be stored and displayed at an ambient temperature of forty-five (45) degrees Fahrenheit (~~45°F~~) or below. (*State Egg Board; Reg 2, Title I, Sec 2; filed Aug 14, 1973, 1:30 p.m.: Rules and Regs. 1974, p. 82; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1776; readopted filed Nov 7, 2001, 3:22 p.m.: 25 IR 937*)

SECTION 8. 370 IAC 1-2-3 IS ADDED TO READ AS FOLLOWS:

370 IAC 1-2-3 Temperature requirements; transportation

Authority: IC 16-42-11-5

Affected: IC 16-42-11-5

Sec. 3. All eggs packed in containers for the purpose of resale to consumers shall be transported under refrigeration at an ambient temperature no greater than forty-five (45) degrees Fahrenheit or seven and two-tenths (7.2) degrees Celsius. (*State Egg Board; 370 IAC 1-2-3*)

SECTION 9. 370 IAC 1-3-1 IS AMENDED TO READ AS FOLLOWS:

370 IAC 1-3-1 Wholesale packaging and labeling

Authority: IC 16-42-11-5

Affected: IC 16-42-11-5

Sec. 1. The eggs shall be sold at wholesale in cases, boxes, or containers which that shall be plainly labeled as:

- (1) Grade AA, Grade A, or Grade B; and as
- (2) to size, "Jumbo", "Extra Large", "Large", "Medium", "Small", or "Pee Wee";

according to standards of quality and size established in this article. (*State Egg Board; Reg 3, Title I, Sec 1, filed Aug 14, 1973, 1:30 p.m.: Rules and Regs. 1974, p. 82; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1776; readopted filed Nov 7, 2001, 3:22 p.m.: 25 IR 937*)

SECTION 10. 370 IAC 1-3-2 IS AMENDED TO READ AS FOLLOWS:

370 IAC 1-3-2 Consumer packages; date requirements

Authority: IC 16-42-11-5

Affected: IC 16-42-11-5

Sec. 2. All eggs offered for sale in consumer packages (cases, boxes, baskets, or containers) shall:

- (1) be legibly dated (month and day or consecutive day of the year) the day the eggs were packed; and shall
- (2) bear an expiration date of no more than thirty (30) days from date of pack, excluding date of pack.

Shell eggs labeled AA shall bear in distinctly legible form an expiration date of no more than ten (10) days from date of pack excluding date of pack. The expiration date shall be stated as the month and day, for example, April 3 or 4-3, preceded by the letters "EXP" or "SELL BY". Quality is best if sold by the expiration date. (*State Egg Board; Reg 3, Title I, Sec 2; filed Aug 14, 1973, 1:30 p.m.: Rules and Regs. 1974, p. 83; filed Nov 23, 1981, 9:30 a.m.: 5 IR 33, eff Jan 1, 1982; filed Feb 13, 1985, 1:57 p.m.: 8 IR 794; filed Feb 3, 1987, 2:00 p.m.: 10 IR 1225; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1776; readopted filed Nov 7, 2001, 3:22 p.m.: 25 IR 937*)

SECTION 11. 370 IAC 1-3-3 IS AMENDED TO READ AS FOLLOWS:

370 IAC 1-3-3 Consumer packages; packer identification

Authority: IC 16-42-11-5

Affected: IC 16-42-11-5

Sec. 3. All eggs offered for sale in consumer packages (cases, boxes, baskets, or containers) shall be labeled with one (1) of the following means of identification:

- (1) Name and address of packer.
- (2) Indiana state egg license number, **for example, IN-000.**
- (3) United States Department of Agriculture plant number, **for example, P-000.**
- (4) Egg license number from another state, provided the number is on file in writing at the state egg board office.
- (5) **United States Department of Agriculture Shell Egg Surveillance number, including state code and handler code, for example, 18-0000. Note: The Shell Egg Surveillance registrant number contains a state code, county code, and handler code. Do not include the county code, only state and handler number.**

All eggs offered for sale in cases, boxes, or cartons shall

contain labeling ~~which that~~ indicates refrigeration is required. **Additionally, all cartons of shell eggs shall bear the statement, "SAFE HANDLING INSTRUCTIONS: To prevent illness from bacteria: Keep eggs refrigerated, cook eggs until yolks are firm, and cook foods containing eggs thoroughly."** The statement shall appear prominently and conspicuously, with the words "SAFE HANDLING INSTRUCTIONS" in bold type. The statement shall be set off in a box by use of hairlines. Shell eggs that have been specifically processed to destroy all viable salmonella shall be exempt from this requirement. (*State Egg Board; Reg 3, Title I, Sec 3; filed Aug 14, 1973, 1:30 p.m.: Rules and Regs. 1974, p. 83; filed Feb 13, 1985, 1:57 p.m.: 8 IR 794; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1776; readopted filed Nov 7, 2001, 3:22 p.m.: 25 IR 937*)

SECTION 12. 370 IAC 1-3-4 IS AMENDED TO READ AS FOLLOWS:

370 IAC 1-3-4 Restricted eggs; definition; labeling

Authority: IC 16-42-11-5
Affected: IC 16-42-11-5

Sec. 4. (a) ~~Public Law 91-597~~ **Regulations Governing the Inspection of Eggs (7 CFR 57)** requires that eggs classed as restricted eggs, dirties, checks, leakers, ~~inedibles~~, and loss and incubator rejects as well as graded eggs, exceeding the tolerances allowed for restricted eggs in United States Grade B standards must be labeled with certain required information. (Leakers ~~and~~ loss ~~inedibles~~, and incubator rejects must also be denatured or decharacterized at the point of grading.) Labeling must be legible and conspicuous. The name and address of the packer must appear on each case or label.

(b) Examples of labeling shall be as follows:

Restricted Eggs for Processing Only in an Official USDA Egg Products Plant. Name _____ Address _____ Zip _____
--

Dirty and Checked Eggs for Processing Only in an Official USDA Egg Products Plant. Name _____ Address _____ Zip _____

(c) Labeling for loss, leakers, ~~inedibles~~, and incubator rejects shall be as follows:

Restricted Eggs. Not to be Used as Human Food. Name _____ Address _____ Zip _____
--

Denatured Inedible Egg Products. Not to be Used as Human Food. Name _____ Address _____ Zip _____
--

(*State Egg Board; Reg 3, Title II, Sec 1; filed Aug 14, 1973, 1:30 p.m.: Rules and Regs. 1974, p. 83; filed Nov 23, 1981, 9:30 a.m.: 5 IR 34, eff Jan 1, 1982; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1776; readopted filed Nov 7, 2001, 3:22 p.m.: 25 IR 937*)

SECTION 13. 370 IAC 1-4-1 IS AMENDED TO READ AS FOLLOWS:

Rule 4. Inspection and Noncompliance

370 IAC 1-4-1 Inspection

Authority: IC 16-42-11-5
Affected: IC 16-6-1-2; IC 16-42-11-12

Sec. 1. All inspectors named by the ~~Director~~ **dean of agriculture of the Purdue University Agricultural Experiment Station** as provided for in this ~~act~~, **article**, shall, in the inspection of eggs, be governed by the rules ~~and regulations~~ of the state egg board, ~~These rules and regulations are to include~~ **including** the standards of quality and weight. (*State Egg Board; Reg 4, Title I, Sec 1; filed Aug 14, 1973, 1:30 p.m.: Rules and Regs. 1974, p. 84; readopted filed Nov 7, 2001, 3:22 p.m.: 25 IR 937*)

SECTION 14. 370 IAC 1-4-2 IS AMENDED TO READ AS FOLLOWS:

370 IAC 1-4-2 Removal of below standard eggs

Authority: IC 16-42-11-5
Affected: IC 16-42-11-5

Sec. 2. Shell eggs offered for sale at retail or wholesale and found to be below the minimum standards and requirements of quality ~~and/or~~ **or** weight, **or both**, for grade and size marked, shall be removed at the time of inspection. (*State Egg Board; Reg 4, Title II, Sec 1; filed Aug 14, 1973, 1:30 p.m.: Rules and Regs. 1974, p. 84; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1777; readopted filed Nov 7, 2001, 3:22 p.m.: 25 IR 937*)

SECTION 15. 370 IAC 1-4-3 IS AMENDED TO READ AS FOLLOWS:

Proposed Rules

370 IAC 1-4-3 Violations; inspectors' duties

Authority: IC 16-42-11-5

Affected: IC 16-6-1-2; IC 16-42-11-12

Sec. 3. The state egg board hereby requests the shell egg inspectors to follow the procedure outlined ~~below~~ **as follows** when ~~the~~ product is found in violation of this ~~act~~ **article**:

- (1) Discuss ~~the~~ problem with parties involved and request their cooperation in removing product from sale.
- (2) Call ~~the~~ state office when cooperation with the parties involved is not received.
- (3) Prepare ~~the~~ report in writing to the state egg board giving details of ~~the~~ violation and disposition of ~~the~~ product, with **a** copy to ~~the~~ party or parties involved in ~~the~~ violation.

(State Egg Board; Reg 4, Title II, Sec 2; filed Aug 14, 1973, 1:30 p.m.: Rules and Regs. 1974, p. 84; readopted filed Nov 7, 2001, 3:22 p.m.: 25 IR 937)

SECTION 16. 370 IAC 1-5-1 IS AMENDED TO READ AS FOLLOWS:

370 IAC 1-5-1 Advertisements

Authority: IC 16-42-11-5

Affected: IC 16-42-11-5

Sec. 1. At retail, if the price is quoted, all quotations or advertising of any kind by any media connected with the sale of eggs by registrants of this ~~act~~ **article**, shall plainly state the grade and size of the eggs so priced in such quotations or advertisements. (State Egg Board; Reg 5, Title I, Sec 1; filed Aug 14, 1973, 1:30 p.m.: Rules and Regs. 1974, p. 84; filed Nov 23, 1981, 9:30 a.m.: 5 IR 34, eff Jan 1, 1982; readopted filed Nov 7, 2001, 3:22 p.m.: 25 IR 937)

SECTION 17. 370 IAC 1-6-1 IS AMENDED TO READ AS FOLLOWS:

370 IAC 1-6-1 Grade and size identification

Authority: IC 16-42-11-5

Affected: IC 16-42-11-5

Sec. 1. (a) All packages, of whatever kind, in which eggs are offered for sale by registrants under this article shall be marked as:

- (1) Grade AA;
- (2) Grade A; or
- (3) Grade B.

(b) All packages bearing the grade mark shall be identified as to size by:

- (1) Jumbo;
- (2) Ex-Large;
- (3) Large;
- (4) Medium;
- (5) Small; or
- (6) Pee Wee.

(State Egg Board; Reg 6, Title I, Sec 1; filed Aug 14, 1973, 1:30 p.m.: Rules and Regs. 1974, p. 84; filed Feb 12, 1993, 5:00

p.m.: 16 IR 1777; readopted filed Nov 7, 2001, 3:22 p.m.: 25 IR 937)

SECTION 18. 370 IAC 1-8-1 IS AMENDED TO READ AS FOLLOWS:

370 IAC 1-8-1 Fresh eggs

Authority: IC 16-42-11-5

Affected: IC 16-42-11-5

Sec. 1. Fresh eggs shall meet the minimum standards and requirements of quality and weight under 370 IAC 1-1-3 for:

- (1) Indiana Grade AA;
- (2) Indiana Grade A; or
- (3) Indiana Grade B;

eggs. (State Egg Board; Reg 8, Title I, Sec 1; filed Aug 14, 1973, 1:30 p.m.: Rules and Regs. 1974, p. 85; filed Nov 23, 1981, 9:30 a.m.: 5 IR 34, eff Jan 1, 1982; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1777; readopted filed Nov 7, 2001, 3:22 p.m.: 25 IR 937)

SECTION 19. 370 IAC 1-9-1 IS AMENDED TO READ AS FOLLOWS:

370 IAC 1-9-1 Record keeping by wholesalers

Authority: IC 16-42-11-5

Affected: IC 16-42-11-10

Sec. 1. (a) All wholesalers shall keep such records as necessary to indicate accurately the case (**thirty** (30) dozen) volume of shell eggs sold in Indiana. These records shall include ~~the~~ **following**:

- (1) Invoices showing purchases and sales of shell eggs.
- (2) A sales ledger showing all egg sales made at wholesale in Indiana to any retailer, hotel, restaurant, hospital, school, nursing home, **or** state or federal institution.
- (3) A cumulative summary of sales made in Indiana.

(b) The ~~above~~ records **required in subsection (a)** shall be retained by the wholesaler for a period of one (1) calendar year exclusive of the current operating quarter. (State Egg Board; 370 IAC 1-9-1; filed Feb 13, 1985, 1:57 p.m.: 8 IR 794; readopted filed Nov 7, 2001, 3:22 p.m.: 25 IR 937)

SECTION 20. 370 IAC 1-10-1 IS AMENDED TO READ AS FOLLOWS:

370 IAC 1-10-1 Shell egg packers

Authority: IC 16-42-11-5

Affected: IC 16-42-11-5

Sec. 1. (a) This section establishes minimum sanitation and operating requirements for shell egg grading plants engaged in grading, storage, packaging, and distribution of eggs.

(b) Buildings shall be of sound construction so as to prevent the entrance or harboring of vermin.

(c) All areas and rooms in which eggs are handled, graded, and packed shall be kept clean.

(d) Cooler rooms shall be free from objectionable odors, such as mustiness or a rotten odor, and shall be maintained in a clean, sanitary condition.

(e) Egg cleaning equipment shall be kept in good repair and shall be thoroughly cleaned after each day's use or more often if necessary to maintain a sanitary condition. The wash water should be potable and maintained at a temperature of ninety **(90)** degrees Fahrenheit ~~(90°F)~~ minimum. The wash water temperature must be at least twenty **(20)** degrees Fahrenheit ~~(20°F)~~ greater than the egg temperature. The wash water shall be replaced frequently, a minimum of once a day, and the detergent and sanitizer shall be kept at an effective level at all times.

(f) During any rest period, or at anytime when the equipment is not in operation, the eggs shall be removed from the washing and rinsing area of the egg washer and from the scanning area whenever there is a build-up of heat.

(g) Only the United States Department of Agriculture or ~~federally~~ approved cleaning and sanitizing compounds may be used ~~Current list of proprietary substances and nonfood compounds:~~ in shell egg processing plants. To assure that only compounds are used for the purpose intended, plant management must provide the inspector, upon request, with a written guaranty stating that each compound used in the shell egg processing plant complies with federal food laws and regulations, and can be legally used in the shell egg processing plant for the purpose intended. Washed eggs shall be reasonably dry before containing or casing. (*State Egg Board; 370 IAC 1-10-1; filed Feb 3, 1987, 2:00 p.m.: 10 IR 1226; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1777; readopted filed Nov 7, 2001, 3:22 p.m.: 25 IR 937*)

SECTION 21. 370 IAC 1-10-2 IS AMENDED TO READ AS FOLLOWS:

370 IAC 1-10-2 Retailers and wholesalers

Authority: IC 16-42-11-5

Affected: IC 16-42-11-5

Sec. 2. (a) This section establishes minimum sanitation requirements for retailers and wholesalers.

(b) Display cases in which eggs are offered for sale to consumers must be clean and free from any substances or conditions whereby the eggs could become adulterated through absorption of bacteria or odors ~~which that~~ could affect the quality or taste of eggs.

(c) All storage areas where eggs are held must be maintained in a clean and sanitary condition. (*State Egg Board; 370 IAC 1-*

10-2; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1778; readopted filed Nov 7, 2001, 3:22 p.m.: 25 IR 937)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on November 6, 2002 at 9:30 a.m., at Purdue University, Purdue Memorial Union, Room 258, West Lafayette, Indiana the State Egg Board will hold a public hearing on proposed amendments concerning requirements for processing, transportation, and consumer container identification for shell eggs, including updating matters incorporated by reference. Adds a requirement for safe handling instructions for egg cartons. Makes other substantive and technical changes. Copies of these rules are now on file at the State Egg Board, Purdue University, Poultry Building, Room 101, West Lafayette, Indiana and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

David J. Steen
Executive Administrator
State Egg Board

**TITLE 405 OFFICE OF THE SECRETARY OF
FAMILY AND SOCIAL SERVICES**

Proposed Rule
LSA Document #02-214

DIGEST

Amends 405 IAC 1-16-2 to specify the payment level for hospice services on the date that an individual is discharged from inpatient or respite hospice care. Amends 1-16-4 to specify that, in order to receive Medicaid reimbursement for room and board for nursing home residents receiving hospice services, the hospice must have a written agreement with the nursing facility. Amends 405 IAC 5-34-1 to specify that the hospice provider must provide all services in compliance with the Medicaid provider agreement, the appropriate provider manual and all other Medicaid policy documents issued to provider at the time services were rendered, and any applicable state or federal statute or regulations. Amends 405 IAC 5-34-2 to specify licensure and certification requirements for Medicaid hospice providers. Amends 405 IAC 5-34-3 to specify the requirements for Medicaid reimbursement for hospice services provided by out of state hospice providers. Amends 405 IAC 5-34-4 to specify the requirements for obtaining authorization for hospice services. Adds 405 IAC 5-34-4.1 regarding appeals of hospice authorization determinations. Adds 405 IAC 5-34-4.2 to provide for retrospective audit of hospice services including review for medical necessity. Amends 405 IAC 5-34-5 to specify requirements relating to the hospice physician certification form. Amends 405 IAC 5-34-6 to specify requirements

Proposed Rules

relating to election and revocation of hospice services. Amends 405 IAC 5-34-7 to specify requirements relating to the hospice plan of care. Effective 30 days after filing with the secretary of state.

405 IAC 1-16-2	405 IAC 5-34-4.1
405 IAC 1-16-4	405 IAC 5-34-4.2
405 IAC 5-34-1	405 IAC 5-34-5
405 IAC 5-34-2	405 IAC 5-34-6
405 IAC 5-34-3	405 IAC 5-34-7
405 IAC 5-34-4	

SECTION 1. 405 IAC 1-16-2 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-16-2 Levels of care

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-40

Affected: IC 12-15

Sec. 2. (a) Reimbursement for hospice care shall be made according to the methodology and amounts calculated by the **Centers for Medicare and Medicaid Services (CMS), formerly the Health Care Financing Administration (HCFA)**. Medicaid hospice reimbursement rates are based on Medicare reimbursement rates and methodologies, adjusted to disregard offsets attributable to Medicare coinsurance amounts. The rates will be adjusted for regional differences in wages using the geographical areas defined by ~~HCFA~~ **CMS** and hospice wage index published by ~~HCFA~~ **CMS**.

(b) Medicaid reimbursement for hospice services will be made at one (1) of four (4) all-inclusive per diem rates for each day in which a Medicaid recipient is under the care of the hospice provider. The reimbursement amounts are determined within each of the following categories:

- (1) Routine home care.
- (2) Continuous home care.
- (3) Inpatient respite care.
- (4) General inpatient hospice care.

(c) The hospice will be paid at the routine home care rate for each day the recipient is at home, under the care of the hospice provider, and not receiving continuous home care. This rate is paid without regard to the volume or intensity of routine home care services provided on any given day.

(d) Continuous home care is to be provided only during a period of crisis. A period of crisis is defined as a period in which a patient requires continuous care that is primarily nursing care to achieve palliation and management of acute medical symptoms. Care must be provided by either a registered nurse or a licensed practical nurse, and a nurse must provide care for over half the total period of care. A minimum of eight (8) hours of care must be provided during a twenty-four (24) hour day that begins and ends at midnight. This care need not be continuous and uninterrupted. The continuous home care rate is

divided by twenty-four (24) hours in order to arrive at an hourly rate. For every hour or part of an hour of continuous care furnished, the hourly rate will be reimbursed to the hospice provider for up to twenty-four (24) hours a day.

(e) The hospice provider will be paid at the inpatient respite care rate for each day that the recipient is in an approved inpatient facility and is receiving respite care. Respite care is short term inpatient care provided to the recipient only when necessary to relieve the family members or other persons caring for the recipient. Respite care may be provided only on an occasional basis. Payment for respite care may be made for a maximum of five (5) consecutive days at a time, including the date of admission, but not counting the date of discharge. Payment for the sixth and any subsequent days is to be made at the routine home care rate.

(f) Subject to the limitations in section 3 of this rule, the hospice provider will be paid at the general inpatient hospice rate for each day the recipient is in an approved inpatient hospice facility and is receiving services related to the terminal illness. The recipient must require general inpatient care for pain control or acute or chronic symptom management that cannot be managed in other settings. Documentation in the recipient's record must clearly explain the reason for admission and the recipient's condition during the stay in the facility at this level of care. No other fixed payment rate (i.e., routine home care) will be made for a day on which the patient receives general hospice inpatient care. Services provided in the inpatient setting must conform to the hospice patient's plan of care. The hospice provider is the professional manager of the patient's care, regardless of the physical setting of that care or the level of care. If the inpatient facility is not also the hospice provider, the hospice provider must have a contract with the inpatient facility delineating the roles of each provider in the plan of care.

(g) When routine home care or continuous home care is furnished to a recipient who resides in a nursing facility, the nursing facility is considered the recipient's home.

(h) Reimbursement for inpatient respite care is available only for a recipient who resides in a private home. Reimbursement for inpatient respite care is not available for a recipient who resides in a nursing facility.

(i) When a recipient is receiving general inpatient or inpatient respite care, the applicable inpatient rate (general or respite) is paid for the date of admission and all subsequent inpatient days, except the day on which the patient is discharged. For the day of discharge, the appropriate home care rate is paid unless the patient dies as an inpatient. In the case where the member is discharged deceased, the applicable inpatient rate (general or respite) is paid for the date of discharge. (Office of the Secretary of Family and Social

Services; 405 IAC 1-16-2; filed Mar 9, 1998, 9:30 a.m.: 21 IR 2377; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)

SECTION 2. 405 IAC 1-16-4 IS AMENDED TO READ AS FOLLOWS:

405 IAC 1-16-4 Additional amount for nursing facility residents

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-40
Affected: IC 12-15

Sec. 4. (a) An additional per diem amount will be paid directly to the hospice provider for room and board of hospice residents in a certified nursing facility receiving routine or continuous care services, **when the office has determined that the recipient requires nursing facility level of care. Medicaid reimbursement is available for hospice services rendered to a nursing facility resident only if, prior to services being rendered, the hospice and the nursing facility enter into a written agreement under which the hospice takes full responsibility for the professional care management of the resident's hospice care and the nursing facility agrees to provide room and board to the individual.** In this context, "room and board" includes all assistance in the activities of daily living, socializing activities, administration of medication, maintaining the cleanliness of a resident's room, and supervision and assisting in the use of durable medical equipment and prescribed therapies.

(b) The room and board rate will be ninety-five percent (95%) of the lowest per diem reimbursement rate Indiana Medicaid would have paid to the nursing facility for any resident for those dates of service on which the recipient was a resident of that facility.

(c) Medicaid payment to the nursing facility for nursing facility care for the hospice resident is discontinued when the resident makes an election to receive hospice care. Any payment to the nursing facility for furnishing room and board to hospice patients is made by the hospice provider under the terms of its agreement with the nursing facility.

(d) The additional amount for room and board is not available for recipients receiving inpatient respite care or general inpatient care. *(Office of the Secretary of Family and Social Services; 405 IAC 1-16-4; filed Mar 9, 1998, 9:30 a.m.: 21 IR 2378; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)*

SECTION 3. 405 IAC 5-34-1 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-34-1 Policy

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-40
Affected: IC 12-15

Sec. 1. (a) Medicaid reimbursement is available for hospice services subject to the limitations in this rule and 405 IAC 1-16. Hospice services consist of the following:

- (1) Palliative care for the physical, psychological, social, spiritual, and other special needs of a hospice program patient during the final stages of the patient's terminal illness.
- (2) Care for the psychological, social, spiritual, and other needs of the hospice program patient's family before and after the patient's death.

(b) In order to receive Medicaid reimbursement for hospice services, a hospice provider must meet the requirements of section 2 of this rule.

(c) Notwithstanding any prior approval by the office, the provision of all services shall comply with the Medicaid provider agreement, the appropriate provider manual applicable at the time such services were provided, all other Medicaid policy documents issued to providers, and any applicable state or federal statute or regulation. *(Office of the Secretary of Family and Social Services; 405 IAC 5-34-1; filed Mar 9, 1998, 9:30 a.m.: 21 IR 2379; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)*

SECTION 4. 405 IAC 5-34-2 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-34-2 Provider enrollment

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-40
Affected: IC 12-15; IC 16-25-3

Sec. 2. (a) In order to enroll as a hospice provider in the Indiana Medicaid program, a provider must submit a provider enrollment agreement as specified in 405 IAC 5-4. A separate provider agreement for hospice services must be completed even if the provider currently participates in the Indiana Medicaid program as a provider of another service.

(b) A hospice provider must be certified as a hospice provider in the Medicare program. A copy of the provider's Medicare Certification Letter from **the Centers for Medicare and Medicaid Services (CMS)**, formerly the Health Care Financing Administration, must be submitted with the Medicaid provider enrollment agreement. **The hospice provider who operates at more than one (1) location must provide a copy of the Medicare Certification Letter from CMS that demonstrates that the regional office has approved each additional office location to be Medicare-certified as a either a satellite office of the home office location or as a separate hospice with its unique Medicare provider number.**

(c) The provider must comply with all state and federal requirements for Medicaid **and Medicare** providers in addition to the requirements in this section. **The hospice and all hospice employees must be licensed in accordance with applicable federal, state, and local laws and regulations as required under federal regulations at 42 CFR 418.72 and Indiana state hospice licensure at IC 16-25-3.**

(d) The hospice provider must designate an interdisciplinary

Proposed Rules

group composed of individuals who are employees of the hospice and who provide or supervise care and services offered by the hospice provider. At a minimum, this group must include all of the following persons:

- (1) A medical director, who must be a doctor of medicine or osteopathy.
- (2) A registered nurse.
- (3) A social worker.
- (4) A pastoral or other counselor.

(e) The interdisciplinary group is responsible for the following:

- (1) Participation in the establishment of the plan of care.
- (2) Provision or supervision of hospice care and services.
- (3) Review and updating of the plan of care.
- (4) Establishment of policies governing the day-to-day provision of care and services.

(f) A hospice provider may not discontinue or diminish care provided to the Indiana Medicaid recipient because of the recipient's source of payment.

(g) The provider must demonstrate respect for a recipient's rights by ensuring that the election of hospice services is based on the informed, voluntary consent of the recipient or the recipient's representative.

(h) A hospice provider may discharge a recipient from hospice services only if one (1) or more of the following occurs:

- (1) The recipient dies.
- (2) The recipient is determined to have a prognosis greater than six (6) months.
- (3) The recipient moves out of the hospice's service area.
- (4) The safety of the recipient, other patients, or hospice staff is compromised.

(Office of the Secretary of Family and Social Services; 405 IAC 5-34-2; filed Mar 9, 1998, 9:30 a.m.: 21 IR 2380; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)

SECTION 5. 405 IAC 5-34-3 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-34-3 Out-of-state providers

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-40
Affected: IC 12-15

Sec. 3. (a) Subject to the conditions in this section **and section 2 of this rule**, and any applicable state or federal licensing laws or regulations, an Indiana resident may receive hospice services from an out-of-state hospice provider if the provider is:

- (1) located in a designated out-of-state city listed in 405 IAC 5-5-2(a); and
- (2) enrolled in the Indiana Medicaid program.

(b) Prior authorization may be granted for an Indiana resident to receive hospice services from an out-of-state

hospice provider not located in a designated out-of-state city if any one of the criteria listed at 405 IAC 5-5-2(c) is met.

~~(b)~~ **(c)** Routine home care and continuous home care hospice services may be provided by out-of-state hospice providers to Indiana residents in their own home or in a nursing facility located in Indiana.

~~(c)~~ **(d)** Inpatient respite care and general inpatient care hospice services may be provided in an out-of-state hospice provider's facility.

~~(d)~~ **(e)** Routine home care and continuous home care hospice services cannot be provided to an Indiana resident in a nursing facility outside of Indiana, even if the nursing facility is located in an out-of-state designated city listed in 405 IAC 5-5-2(a). *(Office of the Secretary of Family and Social Services; 405 IAC 5-34-3; filed Mar 9, 1998, 9:30 a.m.: 21 IR 2380; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)*

SECTION 6. 405 IAC 5-34-4 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-34-4 Hospice authorization and benefit periods

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-40
Affected: IC 12-15

Sec. 4. (a) Hospice services require ~~prior approval~~ **Medicaid hospice authorization** by the office or its contractor. ~~In order~~ **Medicaid reimbursement is not available for hospice services furnished without authorization.**

~~(b) To obtain prior approval~~ **(b) To obtain prior approval request hospice authorization for Medicaid-only eligible recipients for each hospice benefit period**, the provider must submit all of the following ~~as detailed in this rule~~ **documentation on forms approved by the office:**

- (1) **Medicaid** recipient election statement.
- (2) **Medicaid** physician certification.
- (3) **Medicaid** plan of care.

(c) Dually-eligible Medicare/Medicaid recipients residing in nursing facilities who elect hospice benefits must enroll simultaneously in the Medicare and Medicaid hospice benefits. To obtain hospice authorization, the hospice provider must submit the following forms as approved by the office for a one (1) time enrollment in the Medicaid hospice benefit:

- (1) Medicaid Hospice Authorization Notice for Dually-Eligible Medicare/Medicaid Nursing Facility Residents.**
- (2) A copy of the hospice agency form reflecting the recipient's election of the Medicare hospice benefit. The form must reflect the signature of the recipient or the recipient's representative and the date on which the form was signed.**

The hospice provider is required to resubmit the forms

described in this subsection when a dually-eligible Medicare/Medicaid hospice recipient residing in a nursing facility reflects the Medicare and the Medicaid hospice benefit following a previous hospice revocation or hospice discharge.

(d) Hospice authorization is not required for the dually-eligible Medicare/Medicaid hospice recipient residing at home as Medicare is reimbursing for the hospice care.

~~(b)~~ (e) Hospice eligibility authorization for the Medicaid-only hospice recipient is available in the following consecutive benefit periods:

- (1) One (1) period of ninety (90) days.
- (2) A second period of ninety (90) days.
- (3) An unlimited number of periods of sixty (60) days.

~~(c) Approval~~ (f) Hospice authorization must be granted separately for each benefit period for the Medicaid-only hospice recipient. If benefit periods beyond the first ninety (90) days are necessary, then recertification on the physician certification form and an updated plan of care are required for prior approval authorization of the second and subsequent benefit periods. For the dually-eligible Medicare/Medicaid hospice recipient residing in a nursing facility, hospice authorization is granted one (1) time at the time of enrollment in the Medicaid hospice benefit. Hospice authorization is not required for each hospice benefit period. Hospice authorization is required when the dually-eligible Medicare/Medicaid hospice recipient residing in a nursing facility reflects the Medicare and the Medicaid hospice benefit following a previous hospice revocation or hospice discharge.

(g) In order to obtain authorization and reimbursement for hospice services, the provider must submit the documentation listed in this section to the office or its contractor within ten (10) business days of the effective date of the recipient's election, and within ten (10) business days of the beginning of the second and subsequent benefit periods if required under this section.

(h) When there is insufficient information submitted to render a hospice authorization decision or the documentation contains errors, a hospice authorization request will be suspended for thirty (30) days and the office or its contractor will request additional information from the provider. The provider must make the corrections and resubmit the proper documentation to the office or its contractor within thirty (30) calendar days after the additional information or correction is requested. If the provider fails to resubmit the documentation with the appropriate corrections within the thirty (30) day time period, the request for hospice authorization will be denied. If the provider submits additional documentation within thirty (30) days, but the documenta-

tion submitted does not provide sufficient information to render a decision, the office or its contractor may request additional information. The provider must submit the additional information within thirty (30) days after the additional information is requested. If the provider fails to submit the requested information within the additional thirty (30) days, or if the additional documentation does not provide sufficient information to render a decision, the request for hospice authorization will be denied.

(i) If a request for hospice authorization or supporting documentation are submitted after the time limits in this section, authorization may be granted only for services provided on or after the date that the request is received. Authorization for services furnished prior to the date of a request that does not comply with the time limits in this section may be granted only under the following circumstances:

(1) Pending or retroactive recipient eligibility. The hospice authorization request must be submitted within twelve (12) months of the date of the issuance of the recipient's Medicaid card.

(2) The provider was unaware that the recipient was eligible for services at the time services were rendered. Hospice authorization will be granted in this situation only if the following conditions are met:

(A) The provider's records document that the recipient refused or was physically unable to provide the recipient identification (RID or Medicaid) number.

(B) The provider can substantiate that the provider continually pursued reimbursement from the patient until Medicaid eligibility was discovered.

(C) The provider submitted the request for prior authorization within sixty (60) days of the date Medicaid eligibility was discovered.

(3) Pending or retroactive approval of nursing facility level of care. The hospice authorization request must be submitted within one year of the date nursing facility level of care is approved by the office.

(j) The office will rely on current professional standards, including the local Medicare medical review policies for hospice services, in making the hospice authorization determination.

~~(d)~~ (k) When approval for a benefit period has been granted, a hospice provider may manage a patient's care at the four (4) levels of care according to the medical needs determined by the interdisciplinary team and the requirements of the patient and the patient's family or primary caregivers. Changes in levels of care do not require prior approval as long as these levels are rendered within a prior approved hospice benefit period. (*Office of the Secretary of Family and Social Services; 405 IAC 5-34-4; filed Mar 9, 1998, 9:30 a.m.: 21 IR 2380; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822*)

Proposed Rules

SECTION 7. 405 IAC 5-34-4.1 IS ADDED TO READ AS FOLLOWS:

405 IAC 5-34-4.1 Appeals of hospice authorization determinations

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-40-8
Affected: IC 12-15

Sec. 4.1. (a) Medicaid recipients may appeal the denial or modification of hospice authorization under 405 IAC 1.1.

(b) Any provider submitting a request for hospice authorization under this rule, which has been denied either in whole or in part, may appeal the decision under 405 IAC 1.1 after first submitting a request for reconsideration of the hospice authorization in accordance with the procedures set out in 405 IAC 5-7-2 and 405 IAC 5-7-3 for administrative reconsideration of prior authorization decisions.

(c) When there is insufficient information submitted to render a decision, or the documentation contains errors, a hospice authorization request will be suspended pursuant to section 4 of this rule, and the office or its contractor will request additional information from the provider. Suspension is not a final decision on the merits of the request and is not appealable. If the provider does not submit sufficient information within the time frames set out in section 4(h) of this rule, the request shall be denied. Denial is a final decision and may be appealed pursuant to subsections (a) and (b). (*Office of the Secretary of Family and Social Services; 405 IAC 5-34-4.1*)

SECTION 8. 405 IAC 5-34-4.2 IS ADDED TO READ AS FOLLOWS:

405 IAC 5-34-4.2 Audit

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-40-8
Affected: IC 12-15

Sec. 4.2. (a) The office or its contractor may conduct audits of hospice services, including services for which hospice authorization has been granted. Audit of hospice services shall include review of the medical record to determine the medical necessity of services based upon applicable current professional standards, including the local Medicare medical review policies for hospice services.

(b) If the office determines that hospice services for a member are not medically necessary, hospice authorization will be revoked for the dates during which hospice services did not meet medical necessity criteria for hospice care. Medicaid payment for hospice services is not available for services that the office determines are not medically necessary. (*Office of the Secretary of Family and Social Services; 405 IAC 5-34-4.2*)

SECTION 9. 405 IAC 5-34-5 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-34-5 Physician certification

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-40
Affected: IC 12-15

Sec. 5. (a) In order for an individual to receive Medicaid-covered hospice services, a physician must certify in writing that the individual is terminally ill and expected to die from that illness within six (6) months. For a dually eligible Medicaid/Medicare recipient, the hospice provider must comply with Medicare physician certification requirements, but the provider is not required to complete the Medicaid physician certification form or to submit the physician certification to the office. For a Medicaid-only hospice recipient, the Medicaid physician certification form must be completed and submitted to office as set out in this section.

(b) As required by federal regulations, the certification in subsection (a) must:

(1) be completed for the first period of ninety (90) days by:

(A) the medical director of the hospice program or the physician member of the hospice interdisciplinary group; and

(B) the physician member of the disciplinary group and the recipient's attending physician if the recipient has an attending physician;

(2) be completed by one (1) of the physicians listed in subdivision (1)(A) for the second and subsequent periods;

(3) be signed and dated;

(4) identify the diagnosis that prompted the individual to elect hospice services;

(5) include a statement that the prognosis for life expectancy is six (6) months or less; and

(6) be submitted to the office or its designee within the timeframes in subsection (c).

(c) The Medicaid physician certification must be submitted for the first period within ten (10) business days of the effective date of the Medicaid-only recipient's election. For the second and subsequent periods, the Medicaid physician certification must be submitted within ten (10) business days of the beginning of the benefit period.

(d) For the Medicaid-only hospice recipient, the Medicaid physician certification form must be included in the recipient's medical chart in the hospice agency and the recipient's medical chart in the nursing facility. (*Office of the Secretary of Family and Social Services; 405 IAC 5-34-5; filed Mar 9, 1998, 9:30 a.m.: 21 IR 2381; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822*)

SECTION 10. 405 IAC 5-34-6 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-34-6 Election of hospice services

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-40
Affected: IC 12-15

Sec. 6. (a) In order to receive hospice services, a recipient must elect hospice services by filing an election statement with the hospice provider on forms specified by the office.

(b) Election of the hospice benefit requires the recipient to waive Medicaid coverage for the following services:

- (1) Other forms of health care for the treatment of the terminal illness for which hospice care was elected, or for treatment of a condition related to the terminal illness.
- (2) Services provided by another provider which are equivalent to the care provided by the elected hospice provider.
- (3) Hospice services other than those provided by the elected hospice provider or its contractors.

(c) The recipient or recipient's representative may designate an effective date for the election that begins with the first day of hospice care or any other subsequent day of hospice care. The individual may not designate an effective date that is earlier than the date of election.

(d) **For Medicaid-only hospice recipient, the Medicaid election form must be submitted to the office or its designee along with the Medicaid physician's certification required by section 5 of this rule when hospice services are initiated. It is not necessary to submit the Medicaid election form for the second and subsequent benefit periods unless the recipient has revoked the election and wishes to reelect hospice care.**

(e) **For the dually-eligible Medicare/Medicaid hospice recipient residing in the nursing facility, the hospice agency election form reflecting the Medicare hospice election date and the recipient's signature must be submitted with the Medicaid hospice authorization form for dually-eligible Medicare/Medicaid nursing facility residents. It is not necessary to submit the Medicare election form for the second and subsequent benefit periods unless the recipient has revoked the election and wishes to reelect hospice care under the Medicare and Medicaid hospice benefits.**

(f) In the event that a recipient or the recipient's representative wishes to revoke the election of hospice services, the following apply:

- (1) The individual must file a hospice revocation statement on a form approved by the office. The form includes a signed statement that the individual revokes the election of Medicaid hospice services for the remaining days in the benefit period. **The form must specify the date that the revocation is to be effective, if later than the date the form is signed by the individual or representative. An individual or representative may not designate an effective date earlier than the date that the revocation is made.**
- (2) A recipient may elect to receive hospice care intermittently rather than consecutively over the benefit periods.
- (3) If a recipient revokes hospice services during any benefit period, time remaining on that benefit period is forfeited.

(4) The revocation form must be completed for Medicaid-only hospice recipients as well as dually-eligible Medicare/Medicaid hospice recipients residing in nursing facilities. The hospice provider must submit this form to the office or its designee.

(5) The Medicaid hospice revocation form must be included in the recipient's medical chart in the hospice agency. If the Medicaid hospice recipient resides in a nursing facility, the Medicaid hospice revocation form must be included in the recipient's nursing facility medical chart as well.

(g) A recipient or a recipient's representative may change hospice providers once during any benefit period. This change does not constitute a revocation of services.

(1) To change the designation of hospice programs, the individual or the individual's representative must complete the Medicaid Hospice Provider Change Request Between Indiana Hospice Providers Form or other form designated by the office for this purpose. This form is required for the Medicaid-only hospice recipient and the dually-eligible Medicare/Medicaid hospice member residing in the nursing facility. The original provider must submit this form to the office or its designee.

(2) The Medicaid Hospice Provider Change Request Between Indiana Hospice Providers Form, or other form designated by the office for this purpose, must be included in the recipient's medical chart in the hospice agency. If the Medicaid hospice recipient resides in a nursing facility, this form must be included in the recipient's nursing facility chart. This documentation requirement is for the Medicaid-only hospice member as well as the dually-eligible Medicare/Medicaid hospice member residing in a nursing facility.

(Office of the Secretary of Family and Social Services; 405 IAC 5-34-6; filed Mar 9, 1998, 9:30 a.m.: 21 IR 2381; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)

SECTION 11. 405 IAC 5-34-7 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-34-7 Plan of care

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2; IC 12-15-40
Affected: IC 12-15

Sec. 7. (a) When an eligible recipient elects to receive services from a certified hospice provider, the provider shall develop a plan of care. **For the Medicaid-only hospice recipients, the provider must submit the Medicaid plan of care form to the office or the office's contractor with the Medicaid physician certification and the Medicaid election statement.**

(b) In developing the plan of care, the provider must comply with the following procedures:

- (1) The interdisciplinary team member who drafts the plan

Proposed Rules

must confer with at least one (1) other member of the interdisciplinary team.

(2) One (1) of the conferees must be a physician or nurse and all other team members must review the plan of care.

(3) All services stipulated within the plan of care must be reasonable and necessary for the palliation or management of the terminal illness and related conditions.

(4) For the Medicaid-only hospice recipient, the Medicaid hospice plan of care must be included in the recipient's medical chart at the hospice agency. If the Medicaid-only recipient resides in a nursing facility, the Medicaid plan of care must also be included in the recipient's nursing facility medical chart.

(5) For the dually-eligible Medicare/Medicaid hospice recipient residing in a nursing facility, a coordinated plan of care prepared and agreed upon by the hospice and nursing facility must be included in the recipient's nursing facility medical chart.

(Office of the Secretary of Family and Social Services; 405 IAC 5-34-7; filed Mar 9, 1998, 9:30 a.m.: 21 IR 2382; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 23, 2002 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed new rules concerning the following: Amends 405 IAC 1-16-2 to specify the payment level for hospice services on the date that an individual is discharged from inpatient or respite hospice care. Amends 1-16-4 to specify that, in order to receive Medicaid reimbursement for room and board for nursing home residents receiving hospice services, the hospice must have a written agreement with the nursing facility. Amends 405 IAC 5-34-1 to specify that the hospice provider must provide all services in compliance with the Medicaid provider agreement, the appropriate provider manual and all other Medicaid policy documents issued to provider at the time services were rendered, and any applicable state or federal statute or regulations. Amends 405 IAC 5-34-2 to specify licensure and certification requirements for Medicaid hospice providers. Amends 405 IAC 5-34-3 to specify the requirements for Medicaid reimbursement for hospice services provided by out of state hospice providers. Amends 405 IAC 5-34-4 to specify the requirements for obtaining authorization for hospice services. Adds 405 IAC 5-34-4.1 regarding appeals of hospice authorization determinations. Adds 405 IAC 5-34-4.2 to provide for retrospective audit of hospice services including review for medical necessity. Amends 405 IAC 5-34-5 to specify requirements relating to the hospice physician certification form. Amends 405 IAC 5-34-6 to specify requirements relating to election and revocation of hospice services. Amends 405 IAC 5-34-7 to specify requirements relating to the hospice plan of

care. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

John Hamilton

Secretary

Office of the Secretary of Family and Social Services

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

Proposed Rule

LSA Document #02-43

DIGEST

Amends 410 IAC 15-1.5-4 and 410 IAC 15-1.5-5 to remove the 48 hour requirement for authentication of entries in medical records and add requirements regarding appropriate authentication of entries in medical records. Effective 30 days after filing with the secretary of state.

410 IAC 15-1.5-4

410 IAC 15-1.5-5

SECTION 1. 410 IAC 15-1.5-4 IS AMENDED TO READ AS FOLLOWS:

410 IAC 15-1.5-4 Medical record services

Authority: IC 16-21-1-7

Affected: IC 16-21-1

Sec. 4. (a) The medical record service has administrative responsibility for the medical records that shall be maintained for every individual evaluated or treated within those services that come under the hospital's license.

(b) The organization of the medical record service shall be appropriate to the scope and complexity of the services provided as follows:

(1) The service shall be directed by a registered record administrator (RRA) or an accredited record technician (ART). If a full-time or part-time RRA or ART is not employed, then a consultant RRA or ART shall be provided to assist the person in charge. Documentation of the findings and recommendations of the consultant shall be maintained.

(2) The medical record service shall be provided with the necessary direction, staffing, and facilities to perform all required functions in order to ensure prompt completion, filing, and retrieval of records.

(c) An adequate medical record shall be maintained with

documentation of service rendered for each individual who is evaluated or treated as follows:

- (1) Medical records are documented accurately and in a timely manner, are readily accessible, and permit prompt retrieval of information.
- (2) A unit record system of filing should be utilized. When this is not possible, a system shall be established by the hospital to retrieve when necessary all divergently located record components.
- (3) The hospital shall use a system of author identification and record maintenance that ensures the integrity of the authentication and protects the security of all record entries. Each entry shall be authenticated **promptly** in accordance with the hospital and medical staff policies.
- (4) Medical records shall be retained in their original or legally reproduced form as required by federal and state law.
- (5) Plain paper facsimile orders, reports, and documents are acceptable for inclusion in the medical record if allowed by the hospital policies.
- (6) The hospital shall have a system of coding and indexing medical records which allows for timely retrieval of records by diagnosis and procedure in order to support continuous quality assessment and improvement activities.
- (7) The hospital shall ensure the confidentiality of patient records which includes, but is not limited to, the following:
 - (A) A procedure for releasing information from or copies of records only to authorized individuals in accordance with federal and state laws.
 - (B) A procedure that ensures that unauthorized individuals cannot gain access to patient records.
- (d) The medical record shall contain sufficient information to:
 - (1) identify the patient;
 - (2) support the diagnosis;
 - (3) justify the treatment; and
 - (4) document accurately the course of treatment and results.
- (e) All entries in the medical record shall be:
 - (1) legible and complete;
 - (2) made only by individuals given this right as specified in hospital and medical staff policies; and
 - (3) authenticated and dated promptly ~~within forty-eight (48) hours~~ in accordance with subsection (c)(3).
- (f) All inpatient records, except those in subsection (g), shall document and contain, but not be limited to, the following:
 - (1) Identification data.
 - (2) The medical history and physical examination of the patient done within the time frames as prescribed by the medical staff rules and section 5(b)(3)(M) of this rule.
 - (3) A statement of the diagnosis or impressions drawn from the admission history and physical examination.
 - (4) Diagnostic and therapeutic orders.
 - (5) Evidence of appropriate informed consent for procedures and treatments for which it is required as specified by the

informed consent policy developed by the medical staff and governing board, and consistent with federal and state law.

- (6) Clinical observations, including results of therapy, documented in a timely manner.
- (7) Progress notes.
- (8) Operative note in accordance with 410 IAC 15-1.6-9(c)(7).
- (9) Results of all consultative evaluations of the patient and appropriate findings by clinical and other staff involved in the care of the patient.
- (10) Nursing notes, nursing plan of care, and entries by other health care providers that contain pertinent, meaningful observations and information.
- (11) Reports of pathology and clinical laboratory examinations, radiology and nuclear medicine examinations or treatment, anesthesia records, and any other diagnostic or therapeutic procedures and their results.
- (12) Documentation of complications and unfavorable reactions to drugs and anesthesia.
- (13) A discharge summary authenticated by the physician. A final progress note may be substituted for the discharge summary in the case of a normal newborn infant and uncomplicated obstetric delivery. The final progress note should include any instruction given to the patient and family.
- (14) Final diagnosis.

(g) A short stay record form used for inpatients hospitalized for less than forty-eight (48) hours, observation patients, ambulatory care patients, and ambulatory surgery patients shall document and contain, but not be limited to, the following:

- (1) Identification data.
- (2) Medical history and description of the patient's condition and pertinent physical findings.
- (3) Diagnostic and therapeutic orders.
- (4) Care based on identified standard of care and standard of practice.
- (5) Data necessary to support the diagnosis and the treatment given, with reports of procedures and tests, and their results, clinical observations, including the results of therapy, and anesthesia given, if applicable.
- (6) Operative note in accordance with 410 IAC 15-1.6-9(c)(7), if applicable.
- (7) Final progress note, including instructions to the patient and family with dismissal diagnosis and disposition of patient.
- (8) Authentication by the physician and other responsible personnel in attendance.
- (h) Outpatient records shall document and contain, but not be limited to, the following:
 - (1) Identification data.
 - (2) Diagnostic and therapeutic orders.
 - (3) Description of treatment given, procedures performed, and documentation of patient response to intervention, if applicable.

Proposed Rules

(4) Results of diagnostic tests and examinations done, if applicable.

(i) Emergency service records shall document and contain, but not be limited to, the following:

- (1) Identification data.
- (2) Time of arrival, means of arrival, time treatment is initiated, and time examined by the physician, if applicable.
- (3) Pertinent history of illness or injury, description of the illness or injury, and examination, including vital signs.
- (4) Diagnostic and therapeutic orders.
- (5) Description of treatment given or prescribed, clinical observations, including the results of treatment, and the reports of procedures and test results, if applicable.
- (6) Authentication by the practitioner or licensed health professional who rendered treatment or prescribed for the patient in accordance with hospital policy.
- (7) Instruction given to patient on release, prescribed follow-up care, signature of patient or responsible other, and name of person giving instructions.
- (8) Diagnostic impression and condition on discharge documented by the practitioner, and disposition of the patient and time of dismissal.
- (9) Copy of transfer form, if patient is referred to the inpatient service of another hospital. If care is not furnished to a patient or if the patient is referred elsewhere, the reasons for such action shall be recorded.

(Indiana State Department of Health; 410 IAC 15-1.5-4; filed Dec 21, 1994, 9:40 a.m.: 18 IR 1269; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234)

SECTION 2. 410 IAC 15-1.5-5 IS AMENDED TO READ AS FOLLOWS:

410 IAC 15-1.5-5 Medical staff

Authority: IC 16-21-1-7

Affected: IC 16-21-1; IC 25-22.5

Sec. 5. (a) The hospital shall have an organized medical staff that operates under bylaws approved by the governing board and is responsible to the governing board for the quality of medical care provided to patients. The medical staff shall be composed of two (2) or more physicians and other practitioners as appointed by the governing board and do the following:

- (1) Conduct outcome oriented performance evaluations of its members at least biennially.
- (2) Examine credentials of candidates for appointment and reappointment to the medical staff by using sources in accordance with hospital policy and applicable state and federal law.
- (3) Make recommendations to the governing board on the appointment or reappointment of the applicant for a period not to exceed two (2) years.
- (4) Maintain a file for each member of the medical staff which includes, but is not limited to, the following:

(A) A completed, signed application.

(B) The date and year of completion of all Accreditation Council for Graduate Medical Education (ACGME) accredited residency training programs, if applicable.

(C) A copy of their current Indiana license showing date of licensure and current number or an available certified list provided by the health professions bureau. A copy of practice restrictions, if any, shall be attached to the license issued by the health professions bureau through the medical licensing board.

(D) A copy of their current Indiana controlled substance registration showing number, as applicable.

(E) A copy of their current Drug Enforcement Agency registration showing number, as applicable.

(F) Documentation of experience in the practice of medicine.

(G) Documentation of specialty board certification, as applicable.

(H) Category of medical staff appointment and delineation of privileges approved.

(I) A signed statement to abide by the rules of the hospital.

(J) Documentation of current health status as established by hospital and medical staff policy and procedure and federal and state requirements.

(K) Other items specified by the hospital and medical staff.

(b) The medical staff shall adopt and enforce bylaws and rules to carry out its responsibilities. These bylaws and rules shall:

(1) be approved by the governing board;

(2) be reviewed at least triennially; **and**

(3) include, but not be limited to, the following:

(A) A description of the medical staff organizational structure. If the organization calls for an executive committee, a majority of the members shall be physicians on the active medical staff.

(B) Meeting requirements of the staff.

(C) A provision for maintaining records of all meetings of the medical staff and its committees.

(D) A procedure for designating an individual physician with current privileges as chief, president, or chairperson of the staff.

(E) A statement of duties and privileges for each category of the medical staff.

(F) A description of the medical staff applicant qualifications.

(G) Criteria for determining the privileges to be granted to individual practitioners and a procedure for applying the criteria to individuals requesting privileges.

(H) A process for review of applications for staff membership, delineation of privileges in accordance with the competence of each practitioner, and recommendations on appointments to the governing board.

(I) A process for appeals of decisions regarding medical staff membership and privileges.

(J) A process for medical staff performance evaluations based on clinical performances indicated in part by the results of quality assessment and improvement activities.

(K) A process for reporting practitioners who fail to comply with state professional licensing law requirements as found in IC 25-22.5, and for documenting appropriate enforcement actions against practitioners who fail to comply with the hospital and medical staff bylaws and rules.

(L) A provision for physician coverage of emergency care ~~which~~ **that** addresses at least:

(i) a definition of emergency care to include, but not be limited to:

(AA) inpatient emergencies; **and**

(BB) emergency services emergencies; and

(ii) a timely response.

(M) A requirement that a complete physical examination and medical history be performed:

(i) on each patient admitted by a practitioner who has been granted such privileges by the medical staff;

(ii) within seven (7) days prior to date of admission and documented in the record with a durable, legible copy of the report and changes noted in the record on admission; or

(iii) within forty-eight (48) hours after an admission.

(N) A requirement that all physician orders shall be in writing or acceptable computerized form and shall be authenticated ~~within forty-eight (48) hours~~ by the responsible individual **in accordance with hospital and medical staff policies.**

(O) A requirement that all verbal orders must be repeated and verified and that the repetition and verification be documented in the patient's medical record signed and dated by the authorized health care professional that took the order. If there is no repetition and verification of the verbal order the prescribing physician/practitioner shall authenticate and date the verbal order within forty-eight (48) hours.

~~(P)~~ **(P)** A requirement that the final diagnosis be documented along with completion of the medical record within thirty (30) days following discharge.

(c) The medical staff should attempt to secure autopsies in all cases of unusual deaths and educational interest. There shall be the following:

(1) A mechanism for documenting in writing the following:

(A) That permission to perform an autopsy was obtained.

(B) The source of the permission.

(2) A system for notifying the medical staff, and specifically the attending practitioner, when an autopsy is being performed.

(Indiana State Department of Health; 410 IAC 15-1.5-5; filed Dec 21, 1994, 9:40 a.m.: 18 IR 1271; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 22, 2002 at 2:00 p.m., at the Indiana State Department of Health, 2 North Meridian Street, Rice Auditorium, Indianapolis, Indiana the Indiana State Department of Health will hold a public hearing on proposed amendments to remove the 48 hour requirement for authentication of entries in medical records and add requirements regarding appropriate authentication of entries in medical records. Copies of these rules are now on file at the Health Care Regulatory Services Commission, Indiana State Department of Health, 2 North Meridian Street, 5th Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Gregory A. Wilson, M.D.

State Health Commissioner

Indiana State Department of Health

TITLE 470 DIVISION OF FAMILY AND CHILDREN

Proposed Rule

LSA Document #02-74

DIGEST

Amends 470 IAC 3.1-12-2 to include fees received pursuant to the cost participation legislation (IC 12-17-15-17) as a funding source for assistance to children eligible for early intervention services. Adds 470 IAC 3.1-12-7 to adopt cost participation procedures. This rule originally established a comprehensive system of early intervention services for eligible infants and toddlers with disabilities and their families. Effective 30 days after filing with the secretary of state.

470 IAC 3.1-12-2

470 IAC 3.1-12-7

SECTION 1. 470 IAC 3.1-12-2 IS AMENDED TO READ AS FOLLOWS:

470 IAC 3.1-12-2 Funding sources

Authority: IC 12-8-8-4; IC 12-13-2-3; IC 12-13-5-3; IC 12-17-15-17

Affected: IC 12-17-15

Sec. 2. (a) The individualized services specified in 470 IAC 3.1-4-2, provided to eligible infants and toddlers and their families, shall be financed through multiple funding sources. Sources which may be available to finance individualized services, as appropriate, may include, but are not limited to, the following:

(1) Title XIX of the Social Security Act (Medicaid).

(2) Third party payors, including private health insurers.

(3) Any medical program administered by the Secretary of the United States Department of Defense.

Proposed Rules

(4) Cost participation by the parent of an eligible child that receives early intervention services, pursuant to and in accordance with IC 12-17-15-17(b) through IC 12-17-15-17(e).

(b) All infants and toddlers and their families who are eligible for early intervention services through Medicaid and Childrens' Special Health Care Services must apply for Medicaid and Childrens' Special Health Care Services.

(c) Third party payors, such as health insurance companies, may be billed for the costs of appropriate early intervention services with informed, written parental consent through financial case management.

(d) Notwithstanding subsections (a)(4), (b), (c), and ~~section sections 3 and 7~~ of this rule, the provision of early intervention services may not be denied or delayed due to disputes between service providers or other agencies regarding financial responsibility to pay for early intervention services, **nor because of the inability of the parent of an eligible child to pay for services, under a cost participation plan.**

(e) Nothing in this article shall be construed as restricting any service provider from providing services to any person regardless of eligibility status; however, no service provider may utilize any early intervention system funding source for services provided to any ineligible child or family or file claims for reimbursement from the early intervention system for services rendered to such child or family. (*Division of Family and Children; 470 IAC 3.1-12-2; filed Jan 29, 1996, 5:15 p.m.: 19 IR 1345; filed Mar 9, 1999, 2:05 p.m.: 22 IR 2266; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235*)

SECTION 2. 470 IAC 3.1-12-7 IS ADDED TO READ AS FOLLOWS:

470 IAC 3.1-12-7 Cost participation plan

Authority: IC 12-8-8-4; IC 12-13-2-3; IC 12-13-5-3; IC 12-17-15-17
Affected: IC 12-17-15

Sec. 7. (a) As used in this section, family of an eligible infant or toddler shall be composed of members who live in the same household as the eligible infant or toddler and include only the following members:

- (1) Biological parent.
- (2) Adoptive parent.
- (3) Sibling.
- (4) Half-sibling.
- (5) Adoptive sibling.

(b) The division shall establish and implement cost participation plan procedures for charges and fees imposed by service providers for the individualized services specified in:

- (1) 470 IAC 3.1-4-2(a)(2) through 470 IAC 3.1-4-2(a)(4);

- (2) 470 IAC 3.1-4-2(a)(6) through 470 IAC 3.1-4-2(a)(10);
- (3) 470 IAC 3.1-4-2(a)(12) through 470 IAC 3.1-4-2(a)(14); and
- (4) 470 IAC 3.1-4-2(a)(16).

(c) The cost participation plan procedures for each eligible family shall be based upon the following:

- (1) The following schedule of costs, which expires on July 1, 2005:

Percentage of Federal Income Poverty Level	Copayment Per Treatment	Maximum Monthly Cost Share Per Family
But Not At Least	More Than	
0%	350%	\$0
351%	450%	\$5
451%	550%	\$10
551%	650%	\$15
651%	750%	\$20
751%	850%	\$25
851%	1000%	\$30
1001%		\$36
		\$180

- (2) The parent's ability to pay.

(d) The division may waive or reduce a required copayment if:

- (1) out-of-pocket medical expenses and personal care needs expenses incurred, within the previous twelve (12) month period preceding the date of application that relate to the health or medical needs of a family member reduce the level of income the parent has to a lower level found in the schedule of costs at subsection (c)(1); or
- (2) the division receives payment from a parent's health care coverage and does not exceed more than three thousand five hundred dollars (\$3,500) per eligible child, per year.

(e) A parent who fails to provide the financial information for the division to be able to determine the copayment amount shall pay the maximum level copayment found in the schedule of costs at subsection (c)(1).

(f) The division may allow and accept voluntarily contributed payments that exceed the parent's required copayment amount.

(g) The parent's cost participation amount shall be reviewed by the division for one (1) or both of the following:

- (1) Annually.
- (2) Within thirty (30) days after the parent reports a reduction in income.

(h) The SPOE shall notify the parent of the following:

- (1) The copayment amount per treatment and the maximum monthly cost share per family.

(2) Any recalculated copayment amount per treatment and the maximum monthly cost share per family determined under subsection (g)(1) or (g)(2).

(i) The parent may request reconsideration by the division of the copayment amount within fifteen (15) days from the date the notification of the copayment amount was received by the parent. The request for reconsideration shall:

- (1) be written;
- (2) be sent to the director of the division; and
- (3) state the specific reasons the copayment amount should be reconsidered.

(j) The division shall establish and implement procedures to assure timely reimbursement of the copayment by parents for early intervention services required under this section.

(k) The copayments that are received by the division under this cost participation plan must be used to fund the early intervention system. (*Division of Family and Children; 470 IAC 3.1-12-7*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 28, 2002 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room B, Indianapolis, Indiana; AND on October 28, 2002 at 1:00 p.m. at Indiana University North, 1700 Mishawaka Avenue, Rooms 223 and 225, South Bend, Indiana; AND on October 28, 2002 at 1:00 p.m. at Indiana University South East, 4201 Grant Line Road, Hoosier West Room, New Albany, Indiana the Division of Family and Children will hold a public hearing on proposed amendments to amend 470 IAC 3.1-12-2 to include fees received pursuant to the cost participation legislation (IC 12-17-15-17) as a funding source for assistance to children eligible for early intervention services and add 470 IAC 3.1-12-7 to adopt cost participation procedures. Written comments may be directed to the First Steps Early Intervention System, Bureau of Child Development, 402 West Washington Street, Room W386, MS 02, Indianapolis, Indiana 46204 ATTENTION: FS Rule Comments.

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W386, MS 02, each First Steps Council and SPOE around the state, and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

John Jay Boyce
Director
Division of Family and Children

TITLE 470 DIVISION OF FAMILY AND CHILDREN

Proposed Rule LSA Document #02-203

DIGEST

Amends 470 IAC 11.1-1-5 to increase the maximum monthly income allowable for participation in the hospital care for the indigent program. Effective 30 days after filing with the secretary of state.

470 IAC 11.1-1-5

SECTION 1. 470 IAC 11.1-1-5 IS AMENDED TO READ AS FOLLOWS:

470 IAC 11.1-1-5 Income determination

Authority: IC 12-13-2-3; IC 12-13-5-3; IC 12-16-3-3
Affected: IC 12-16-3-1

Sec. 5. (a) Income is all money received by the household members in the month of hospitalization subject to subsection (b).

(b) Income received on a quarterly, semiannual, or annual basis shall be divided by the appropriate number of months to establish monthly income.

(c) Countable income is gross monthly income less the following exclusions:

- (1) Supplemental security income of the patient is excluded.
- (2) Fifteen dollars and fifty cents (\$15.50) is deducted from the income of the patient.
- (3) Funds from a grant, scholarship, or fellowship, which are designated for tuition and mandatory books and fees at an educational institution or for vocational rehabilitation or technical training purposes, shall be deducted from the total of such funds.
- (4) All of the earned income of a child under fourteen (14) years of age is excluded.
- (5) Home energy assistance is excluded.
- (6) The deductions allowed by the Internal Revenue Service are excluded from gross self-employment income.
- (7) The deductions allowed by the Internal Revenue Service are excluded from gross rental income, with the following exceptions:
 - (A) Depreciation.
 - (B) Payments on the mortgage principal.
 - (C) Personal expenses of the owner.
 - (D) Insurance to pay off the mortgage in the event of death or disability.
 - (E) Capital expenditures.
- (8) Tax refunds are excluded as income and shall be considered personal property under section 6 of this rule.

Proposed Rules

(9) Net earned income is determined by deducting sixty-five dollars (\$65) plus one-half (½) of the remainder from gross earned income. Any part of the exclusion allowed in subdivision (2), which has not been deducted from unearned income, shall be deducted from gross earned income prior to the determination of net earned income.

(10) A loan shall not be considered as income in the month of receipt if the written or verbal loan agreement is legally binding under state law and includes the following:

(A) The borrower's acknowledgment of an obligation to repay.

(B) A timetable and plan for repayment.

(C) The borrower's expressed intent to repay either by pledging real or personal property or anticipated income.

(d) If the countable income, as determined in subsection (c), of the household members exceeds the monthly income standard as set forth in this subsection, the patient is ineligible for hospital care for the indigent.

Household Size	Maximum Monthly Income
1	\$522 \$544
2	\$703 \$747
3	\$884 \$939
4	\$1,066 \$1,132
Each additional household member	\$182 \$193

(e) **The income standards specified in subsection (d) shall be adjusted on a biennial basis beginning in the year 2004, effective for hospitalizations that begin on and after October 1, 2004. Every two (2) years thereafter, the income standards shall be adjusted effective October 1. The standards shall be in an amount equal to seventy-five percent (75%) of the Federal Poverty Income Guidelines as published in the Federal Register.** (*Division of Family and Children; 470 IAC 11.1-1-5; filed Jun 3, 1986, 3:00 p.m.: 9 IR 2714; filed Dec 4, 1989, 4:40 p.m.: 13 IR 629; errata filed Jun 20, 1990, 4:10 p.m.: 13 IR 2005; filed Jun 14, 1995, 11:00 a.m.: 18 IR 2779; filed Oct 3, 1997, 4:50 p.m.: 21 IR 375; filed Feb 13, 2001, 3:07 p.m.: 24 IR 2090; readopted filed Jul 12, 2001, 1:40 p.m.: 24 IR 4235*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 28, 2002 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 3, Indianapolis, Indiana the Division of Family and Children will hold a public hearing on proposed amendments to increase the maximum monthly income allowable for participation in the hospital care for the indigent program. Written comments may be directed to the Office of General Counsel, ATTENTION: Joy A. Heim, 402 West Washington Street, Room W451, Indianapolis, Indiana 46204.

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

John Jay Boyce
Director
Division of Family and Children

TITLE 760 DEPARTMENT OF INSURANCE

Proposed Rule LSA Document #02-124

DIGEST

Amends 760 IAC 1-59 to set filing and implementation requirements for internal grievance procedures. Effective 30 days after filing with the secretary of state.

760 IAC 1-59-1	760 IAC 1-59-8
760 IAC 1-59-2	760 IAC 1-59-9
760 IAC 1-59-3	760 IAC 1-59-10
760 IAC 1-59-4	760 IAC 1-59-11
760 IAC 1-59-5	760 IAC 1-59-12
760 IAC 1-59-6	760 IAC 1-59-13
760 IAC 1-59-7	760 IAC 1-59-14

SECTION 1. 760 IAC 1-59-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-59-1 Authority

Authority: IC 27-8-28-20; IC 27-13-10-13; IC 27-13-35-1
Affected: IC 27-8-28; IC 27-13-10

Sec. 1. This rule is adopted and promulgated pursuant to the authority granted by **IC 27-8-28-20**, IC 27-13-10-13, and IC 27-13-35-1. (*Department of Insurance; 760 IAC 1-59-1; filed Sep 30, 1998, 2:17 p.m.: 22 IR 446, eff Jan 1, 1999*)

SECTION 2. 760 IAC 1-59-2 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-59-2 Purpose

Authority: IC 27-8-28-20; IC 27-13-10-13
Affected: IC 27-8-28-19; IC 27-13-8-2; IC 27-13-10

Sec. 2. The purpose of this rule is to prescribe the following for **insurers and** health maintenance organizations:

- (1) The form for filing information with the commissioner, as required by **IC 27-8-28-19** and IC 27-13-8-2(a).
- (2) Requirements for notifying enrollees of grievance procedures.
- (3) Requirements for filing, investigating, and resolving grievances and appeals.

(Department of Insurance; 760 IAC 1-59-2; filed Sep 30, 1998, 2:17 p.m.: 22 IR 446, eff Jan 1, 1999)

SECTION 3. 760 IAC 1-59-3 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-59-3 Definitions

Authority: IC 27-8-28-20; IC 27-13-10-13; IC 27-13-35-1

Affected: IC 27-8-28-3; IC 27-13-1-12; IC 27-13-1-32; IC 27-13-10-7

Sec. 3. The definitions in **IC 27-8-28** and IC 27-13 shall apply for purposes of this rule, in addition to the following:

~~(1)~~ **(1)** “Commissioner” means the commissioner of the department of insurance.

~~(2)~~ **(2)** “Department” means the department of insurance.

~~(3)~~ **(1)** “Enrollee”, as defined in IC 27-13-1-12, includes “subscriber” as defined in IC 27-13-1-32 and **“covered individual” as defined in IC 27-8-28-3.**

~~(4)~~ **(2)** “Grievance” means the following:

(A) For a health maintenance organization and a limited service health maintenance organization, any dissatisfaction expressed by or on behalf of an enrollee of a health maintenance organization, or a limited service health maintenance organization regarding the:

~~(A)~~ **(i)** availability, delivery, appropriateness, or quality of health care services;

~~(B)~~ **(ii)** handling or payment of claims for health care services; or

~~(C)~~ **(iii)** matters pertaining to the contractual relationship between:

~~(i)~~ **(AA)** an enrollee and a health maintenance organization or a limited service health maintenance organization; or

~~(ii)~~ **(BB)** a group or individual contract holder and a health maintenance organization or a limited service health maintenance organization;

and for which the enrollee has a reasonable expectation that action will be taken to resolve or reconsider the matter that is the subject of dissatisfaction.

(B) For an insurer, any dissatisfaction expressed by or on behalf of a covered individual regarding:

(i) a determination that a service or a proposed service is not appropriate or medically necessary;

(ii) a determination that a service or a proposed service is experimental or investigational;

(iii) the availability of participating providers;

(iv) the handling or payment of claims for health care services; or

(v) matters pertaining to the contractual relationship between a:

(AA) covered individual and an insurer; or

(BB) group policyholder and an insurer;

and for which the covered individual has a reasonable expectation that action will be taken to resolve or

reconsider the matter that is the subject of the dissatisfaction.

~~(5)~~ **(3)** “Grievance procedures” means written procedures established and maintained by a health maintenance organization, ~~or~~ a limited service health maintenance organization, ~~or~~ **an insurer** for filing, investigating, and resolving grievances and appeals.

~~(6)~~ **(4)** “Major population group” means a racial or ethnic group for whom English is not the primary language and whose members comprise at least ten percent (10%) of the health maintenance organization’s enrollees.

(Department of Insurance; 760 IAC 1-59-3; filed Sep 30, 1998, 2:17 p.m.: 22 IR 447, eff Jan 1, 1999)

SECTION 4. 760 IAC 1-59-4 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-59-4 Reports

Authority: IC 27-8-28-20; IC 27-13-10-13; IC 27-13-35-1

Affected: IC 27-8-28-19; IC 27-13-8-2

Sec. 4. ~~(a)~~ On or before March 1 of each year, **an insurer, a health maintenance organization, and a limited service health maintenance organization** must submit **electronically** to the department a grievance procedure report for the preceding calendar year on the form set forth in section 14 of this rule. A health maintenance organization **and a limited service health maintenance organization** may submit the information required by IC 27-13-8-2(a)(2) and IC 27-13-8-2(a)(3) concurrent with this filing.

~~(b) The report must be prepared in tabular form on paper measuring eight and one-half (8½) inches by eleven (11) inches.~~

~~(c) The report also must be submitted on a disk formatted for Microsoft Excel and the disk must accompany the paper copy.~~
(Department of Insurance; 760 IAC 1-59-4; filed Sep 30, 1998, 2:17 p.m.: 22 IR 447, eff Jan 1, 1999)

SECTION 5. 760 IAC 1-59-5 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-59-5 Grievance register

Authority: IC 27-8-28-20; IC 27-13-10-13; IC 27-13-35-1

Affected: IC 27-8-28; IC 27-13-10-3

Sec. 5. (a) **An insurer, a health maintenance organization, and a limited service health maintenance organization** shall maintain written records that document certain information about all grievances received during a calendar year (the grievance register).

(b) The grievance register shall contain, at a minimum, the following information for each grievance:

(1) A general description of the basis for the grievance using the categories in block 3 of the grievance procedures report set forth in section 14 of this rule.

- (2) Date received.
- (3) Date investigated or reviewed.
- (4) Date resolved.
- (5) Description of resolution.
- (6) Date appeal, if any, was received.
- (7) Date of appeals hearing or review.
- (8) Date appeal was resolved.
- (9) Description of resolution of the appeal.
- (10) Name of enrollee and enrollee's representative, if any, who filed, or upon whose behalf was filed, the grievance.
- (11) Names and titles of all persons who investigated, reviewed, and resolved the grievance.

(c) **An insurer**, a health maintenance organization, or a limited service health maintenance organization shall retain each grievance register until the commissioner has conducted an examination of the organization and adopted a final report of the examination that contains a review of the register for the calendar year covered by the grievance register. (*Department of Insurance; 760 IAC 1-59-5; filed Sep 30, 1998, 2:17 p.m.: 22 IR 447, eff Jan 1, 1999*)

SECTION 6. 760 IAC 1-59-6 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-59-6 Establishment of grievance procedures; filing with and review by commissioner

Authority: IC 27-8-28-20; IC 27-13-10-13; IC 27-13-35-1

Affected: IC 27-8-28-17; IC 27-13-2; IC 27-13-10; IC 27-13-34-8; IC 27-13-39-3

Sec. 6. (a) **An insurer**, a health maintenance organization, and a limited service health maintenance organization shall establish and maintain grievance procedures.

(b) A copy of the grievance procedures, including all forms used in filing and reviewing grievances, shall be included with any application for a certificate of authority submitted to the department.

(c) Any material modifications to the grievance procedures subsequent to the submission of the application shall be filed with the commissioner not more than fifteen (15) days after the adoption of the modification.

(d) The grievance procedures shall require the following:

- (1) **A health maintenance organization must provide written or oral acknowledgment of a grievance or appeal no more than three (3) business days after receipt. Insurers must provide written or oral acknowledgment of a grievance or appeal no more than five (5) business days after receipt.** The acknowledgment must include the name, address, and telephone number of an individual to contact regarding the grievance and the date the grievance was filed.
- (2) Investigation of any grievance or appeal in accordance with written procedures and the requirements of section 10 of this rule.

(3) Documentation of the substance of the grievance and all actions taken by the **insurer or** health maintenance organization regarding the grievance or appeal, including notification, acknowledgment, investigation, and resolution.

(4) Written notification to the enrollee of:

- (A) resolution of the grievance or appeal;
- (B) the right to appeal the resolution;
- (C) information about how, when, and where to appeal the resolution; and
- (D) the right to further remedies allowed by law, in the case of an appeal of a grievance resolution.

(e) The grievance procedures shall include procedures to assist enrollees and representatives of enrollees in filing grievances and appeals, including provisions for assistance to persons with literacy, language, physical, health, or other impediments.

(f) The grievance procedures shall include standards that meet the requirements of **IC 27-8-28-17 or** IC 27-13-10 and section 10 of this rule for timeliness in acknowledging, investigating, and resolving grievances and appeals and that accommodate the clinical urgency of the enrollee's situation. The standards for timeliness shall address:

- (1) the likelihood of death, permanent injury, improvement, or deterioration of health status; and
- (2) the ability to reach and maintain maximum function.

(g) The grievance procedures must require expedited review of a grievance or appeal if the time periods set forth in section 10 of this rule would seriously jeopardize the life or health of an enrollee or the enrollee's ability to reach and maintain maximum function.

(h) ~~The~~ **An HMO's** grievance procedures must comply with the requirements of IC 27-13-39-3 with respect to any grievance regarding denial of coverage for a treatment, procedure, drug, or device on the grounds that it is experimental.

(i) The grievance procedures shall require and describe the process for the appointment of at least one (1) individual who has sufficient experience, knowledge, and training to appropriately resolve a grievance or appeal.

(j) The requirements of subsections (d) through (i) do not apply to a limited service health maintenance organization. (*Department of Insurance; 760 IAC 1-59-6; filed Sep 30, 1998, 2:17 p.m.: 22 IR 447, eff Jan 1, 1999; errata, 22 IR 759*)

SECTION 7. 760 IAC 1-59-7 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-59-7 Notice to enrollees

Authority: IC 27-8-28-20; IC 27-13-10-13; IC 27-13-35-1

Affected: IC 27-8-28; IC 27-13-7-5; IC 27-13-9-4; IC 27-13-10; IC 27-13-39

Sec. 7. (a) **An insurer and** a health maintenance organization shall provide the following to each enrollee:

(1) Information about health care services ~~offered~~ **covered** by the **insurer or** health maintenance organization, including the following:

(A) A description of ~~in-plan and out-of-plan~~ covered services, **including any network sensitive services.**

(B) A description of any limitations on payment for or coverage of health care services, including definitions of commonly used terms.

(C) Criteria used to determine whether to deny coverage.

(D) A description of exclusions from coverage.

(E) An explanation of any limitation on coverage for experimental treatments, procedures, drugs, or devices, including the following:

(i) A description of the process used to determine any limitation.

(ii) A description of the criteria the **insurer or the** health maintenance organization uses to determine whether a treatment, procedure, drug, or device is experimental.

(2) Information about where additional information on access to services can be obtained.

(3) Information about the **insurer's or the** health maintenance organization's grievance procedures, including the toll free telephone number described in section 8 of this rule.

(4) Information about the **insurer's or the** health maintenance organization's structure.

(5) Information about costs for which the enrollee is responsible.

(6) Information about financial incentives and disincentives given by the **insurer or the** health maintenance organization to providers.

(b) Except as provided in subsection (f), the information required by subsection (a) must be:

(1) included in or provided with the evidence of coverage required under IC 27-13-7-5 or any member handbook within the time periods set forth in subsection (f); and

(2) provided to any potential enrollee upon request.

(c) The information required by subsection (a)(3) shall be included on any notice to enrollees regarding the provision, limitation, or denial of health care services.

(d) The toll free telephone number shall be prominently displayed on any enrollment verification card.

(e) **This subsection is applicable to health maintenance organizations only.** A brief statement of an enrollee's right to file a grievance with the health maintenance organization, including the toll free telephone number, shall be posted by a participating provider in a conspicuous public location in each place where health care services are provided by or on behalf of the health maintenance organization. The notice shall be in bold face type at least one-half (½) inch in height. The statement

must contain the following or substantially similar language: "We participate in the following health maintenance organizations: [list names of and toll free telephone numbers of participating HMOs]. If you have coverage through one (1) of these HMOs and have a complaint or grievance, you may call the HMO at its toll free number listed above. The HMO is required by law to try to resolve your complaint or grievance. You may also register a complaint with the Indiana Department of Insurance at 1-800-622-4461. The HMO cannot retaliate against you or your provider for making a complaint.

(f) The information required by subsection (a) must be provided to enrollees not later than one hundred twenty (120) days after the effective date of this rule. During the period beginning one hundred twenty (120) days after the effective date of this rule and ending on the first renewal date of the enrollee's plan that occurs on or after the effective date of this rule, the information required by subsection (a) may be provided to enrollees in an addendum to or statement separate from the documents described in subsections (b) and (d). (*Department of Insurance; 760 IAC 1-59-7; filed Sep 30, 1998, 2:17 p.m.: 22 IR 448, eff Jan 1, 1999*)

SECTION 8. 760 IAC 1-59-8 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-59-8 Toll free telephone number

Authority: IC 27-13-10-13; IC 27-13-35-1

Affected: IC 27-13-9-4; IC 27-13-10-5

Sec. 8. (a) **An insurer and** a health maintenance organization shall establish a toll free telephone number through which grievances and appeals may be filed and information about grievance procedures obtained.

(b) An individual who is knowledgeable about the **insurer's or the** health maintenance organization's grievance procedures and any applicable state laws and regulations must be available to respond to calls received at the toll free telephone number at least forty (40) normal business hours per week. The toll free telephone number must be answered by an answering machine or similar device at all other times.

(c) Any messages left through the toll free telephone number must be returned on the following business day by a qualified individual.

(d) The toll free telephone number must accept grievances in English and the languages of the major population groups served by the health maintenance organization. (*Department of Insurance; 760 IAC 1-59-8; filed Sep 30, 1998, 2:17 p.m.: 22 IR 449, eff Jan 1, 1999*)

SECTION 9. 760 IAC 1-59-9 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-59-9 Filing grievances

Authority: IC 27-8-28-20; IC 27-13-10-13; IC 27-13-35-1
Affected: IC 27-8-28; IC 27-13-10

Sec. 9. (a) A grievance may be filed with **an insurer or a health maintenance organization** orally, including by telephone, or in writing, including by facsimile or electronic means of communication.

(b) A grievance may be filed with a limited service health maintenance organization, in writing, including by facsimile or electronic means of communication.

(c) A grievance is considered to be filed on the day and time it is first received orally or in writing by the **insurer**, health maintenance organization, or limited service health maintenance organization.

(d) A grievance may be filed by an enrollee, or a representative of an enrollee, including a health care provider acting on behalf of an enrollee. (*Department of Insurance; 760 IAC 1-59-9; filed Sep 30, 1998, 2:17 p.m.: 22 IR 449, eff Jan 1, 1999*)

SECTION 10. 760 IAC 1-59-10 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-59-10 Standards for timely review and resolution of grievances

Authority: IC 27-8-28-20; IC 27-13-10-13; IC 27-13-35-1
Affected: IC 27-8-28; IC 27-13-10-7; IC 27-13-10-8

Sec. 10. (a) Minimum standards for timely review and resolution of grievances filed with **an insurer or a health maintenance organization** are as follows:

(1) **A health maintenance organization shall provide** oral or written acknowledgment of a filed grievance ~~must be provided~~ to an enrollee not more than three (3) business days after the grievance is filed. **An insurer shall provide oral or written acknowledgment of a filed grievance to an enrollee or an enrollee's representative not more than five (5) business days after the grievance is filed.**

(2) ~~Resolution of~~ **A health maintenance organization shall resolve** a grievance not more than twenty (20) business days after the grievance is filed. **An insurer shall resolve a grievance not more than twenty (20) business days after the insurer receives all information reasonably necessary to complete the review.**

(3) Written notification to an enrollee of the resolution of a grievance not more than five (5) business days after the resolution.

(4) The time period set forth in subdivision (2) may be extended if **an insurer or a health maintenance organization** is unable to resolve a grievance within the specified time period due to circumstances beyond the **insurer's or the health maintenance organization's control**. An enrollee must be notified in writing of the reason for the delay not more

than nineteen (19) business days after the grievance is filed. The **insurer or the health maintenance organization** shall issue a written notification of the resolution of the grievance not more than ten (10) business days after the notification to the enrollee of the delay.

(b) As used in this rule, "circumstances beyond the **insurer's or the health maintenance organization's control**" means the following:

(1) The failure of a provider that is not a participating provider to provide within fifteen (15) days of the filing of the grievance information that is requested by the **insurer or the health maintenance organization** and is necessary to adequately review and investigate the grievance.

(2) The failure of an enrollee to provide additional information requested by **the insurer or the health maintenance organization** that is necessary to resolve the grievance within fifteen (15) days of the filing of the grievance.

(c) Minimum standards for timely review and resolution of grievance resolution appeals filed with **an insurer or a health maintenance organization** are as follows:

(1) Oral or written acknowledgment **by a health maintenance organization** to an enrollee of a filed appeal not more than three (3) business days after the appeal is filed. **Oral or written acknowledgment by an insurer to a covered individual of a filed appeal not more than five (5) business days after the appeal is filed.**

(2) Resolution of the appeal not more than forty-five (45) business days after the appeal is filed.

(3) Written notification to an enrollee of the resolution of an appeal not more than five (5) business days after the resolution. (*Department of Insurance; 760 IAC 1-59-10; filed Sep 30, 1998, 2:17 p.m.: 22 IR 449, eff Jan 1, 1999*)

SECTION 11. 760 IAC 1-59-11 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-59-11 Grievance resolution notice

Authority: IC 27-13-10-13; IC 27-13-35-1
Affected: IC 27-13-10-7

Sec. 11. The written notification of resolution required by section 10(a) and 10(c) of this rule shall contain the following:

(1) A statement of the **insurer's or the health maintenance organization's** understanding of the enrollee's grievance.

(2) A description of the resolution reached by the **insurer or the health maintenance organization** stated in clear terms and the contract basis or medical rationale for the resolution stated in sufficient detail for the enrollee to respond further to the **insurer's or the health maintenance organization's** position.

(3) A reference to the evidence or documentation used as the basis for the resolution.

(4) A statement of the procedures governing an appeal, including how to file an appeal.

(5) In the case of a resolution of an appeal of a grievance resolution, a notice of the enrollee's right to further remedies allowed by law.

(6) The department, address, and telephone number through which an enrollee may contact a qualified representative to obtain more information about the resolution of the grievance or the right to and procedures governing an appeal or further remedies allowed by law.

(Department of Insurance; 760 IAC 1-59-11; filed Sep 30, 1998, 2:17 p.m.: 22 IR 450, eff Jan 1, 1999)

SECTION 12. 760 IAC 1-59-12 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-59-12 Appeal of a grievance resolution

Authority: IC 27-8-28; IC 27-13-10-13; IC 27-13-35-1

Affected: IC 27-8-28; IC 27-8-17; IC 27-13-10-8

Sec. 12. (a) The health maintenance organization shall appoint a panel of individuals who have sufficient experience, knowledge, and training to appropriately resolve an appeal. If the grievance involves the proposal, refusal, or delivery of a health care procedure, treatment, or service, the panel must include at least one (1) individual who:

- (1) has knowledge in the medical condition, procedure, or treatment at issue;
- (2) is in the same licensed profession as the health care provider who proposed, refused, or delivered the health care procedure, treatment, or service that is the basis of the underlying grievance; and
- (3) is not involved, **in any manner**, in the matter that is the basis of the underlying grievance **or have**

(b) ~~The following individuals may not be appointed to a panel:~~

- ~~(1) Any individual who was involved in the matter that is the basis of the underlying grievance.~~
- ~~(2) Any individual who was involved in the investigation or resolution of the underlying grievance.~~
- ~~(3) Any individual who has a direct business relationship with the enrollee or the health care provider who proposed, refused, or delivered the health care procedure, treatment, or service that is the basis of the underlying grievance.~~

~~(c) A health maintenance organization shall not be required to appoint a panel to resolve an appeal pursuant to IC 27-13-10-8 if the appeal involves substantially the same issue or issues previously reviewed in an appeal conducted pursuant to IC 27-8-17.~~

(b) In the case of an appeal of a grievance described in section 3(2)(B)(i) or 3(2)(B)(ii) of this rule, an insurer shall appoint a panel of one (1) or more qualified individuals to resolve an appeal. The panel shall include one (1) or more individuals who:

- (1) have knowledge of the medical condition, procedure, or treatment at issue;**
- (2) are licensed in the same profession and have a similar specialty as the provide who proposed or delivered the health care procedure, treatment, or service;**
- (3) are not involved in the matter giving rise to the appeal or in the initial investigation of the grievance; and**
- (4) do not have a direct business relationship with the covered individual or the health care provider who previously recommended the health care procedure, treatment, or service giving rise to the grievance.**

~~(c) An insurer and a health maintenance organization shall require the panel to meet at a time during normal business hours and place convenient to an enrollee who wishes to appear before or otherwise communicate with the panel, to the extent reasonably possible. An insurer and a health maintenance organization shall notify an enrollee whose grievance is the subject of an appeal not less than seventy-two (72) hours prior to the meeting of the panel. pursuant to IC 27-13-10-8. The enrollee may waive the seventy-two (72) hour notice of the meeting of the panel. (Department of Insurance; 760 IAC 1-59-12; filed Sep 30, 1998, 2:17 p.m.: 22 IR 450, eff Jan 1, 1999)~~

SECTION 13. 760 IAC 1-59-14 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-59-14 Grievance procedures report form

Authority: IC 27-13-10-13; IC 27-13-35-1

Affected: IC 27-13-8-2

Sec. 14. The form required by section 4(a) of this rule is the following:

~~HMO~~ **GRIEVANCE PROCEDURES REPORT**

NAME: _____

FOR REPORTING PERIOD January 1, ____ through December 31, ____

Block 1 ~~HMO~~ **COMPANY INFORMATION**

NAIC Group Code:	
Assumed business name(s):	
Address:	
General business telephone number:	
Grievance reporting - toll free number:	
Name, and telephone number, and e-mail address of contact person for grievance procedures:	

Proposed Rules

Languages in which grievances may be filed:	
Total number of Indiana enrollees at beginning of reporting period:	
Total number of Indiana enrollees at end of reporting period:	
Service area (use applicable county codes; if the entire state, please indicate entire state rather than list all county codes):	

Block 2

GENERAL INFORMATION

Number of grievances filed		Number of appeals filed	
Number of grievances resolved		Number of appeals resolved	
Number of grievances resolved with HMO Company position upheld		Number of appeals resolved with HMO position upheld	
Number of grievances resolved with HMO Company position overturned		Number of appeals resolved with HMO Company position overturned	
Number of grievances pending		Number of appeals pending	
Time to resolve grievances (average number of days)		Time to resolve appeals (average number of days)	

Block 3

INTERNAL GRIEVANCE AND APPEALS INFORMATION

NOTE: A grievance should not be recorded in more than one (1) category.

Basis	Number Filed	Company Position Upheld? Yes (#): No (#):	Number Pending	Average Number Of Days To Resolve	Appealed? Yes (#): No (#):	Company Position Upheld On Appeal? Yes (#): No (#):	Number Of Appeals Pending	Average Number Of Days To Resolve Appeals
DENIAL OR LIMITATION OF COVERED HEALTH CARE SERVICES								
Inpatient services								
Outpatient services								
Emergency services								
Mental or behavioral services								
Home health care								
Prescription drugs								
Equipment or supplies								
Laboratory services								
Experimental treatments								
Other services								
HEALTH CARE PROVIDERS (for HMOs, LSHMOs, and Insurers with Network plans)								
Quality of health care services								
No referral or expired referral								
Problem with particular provider not available								
Problem with number of providers available								
Problem with type of providers available								
Problem with provider location								
Problem getting appointment								
OTHER BASIS FOR GRIEVANCE								
Difficulty in enrolling/ other enrollment issues								
Problem with claim payment or handling								
Benefits limited or excluded								
Timeliness of decision making								
Other (attach additional sheets if necessary)								

Block 4

DESCRIPTION OF GRIEVANCE PROCEDURES

Please describe your grievance procedures. Attach additional sheets as necessary:

Block 5

DESCRIPTION OF APPEALS PROCEDURES

Please describe your appeals procedures. Attach additional sheets as necessary:

(Department of Insurance; 760 IAC 1-59-14; filed Sep 30, 1998, 2:17 p.m.; 22 IR 451, eff Jan 1, 1999)

SECTION 14. 760 IAC 1-59-13 IS REPEALED.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 22, 2002 at 10:00 a.m., at the Department of Insurance, 311 West Washington Street, Suite 300, Indianapolis, Indiana the Department of Insurance will hold a public hearing on proposed amendments to set filing and implementation requirements for internal grievance procedures. Copies are available at the Web site for the Department of Insurance at www.state.in.us/idoi. Copies of these rules are now on file at the Department of Insurance, 311 West Washington Street, Suite 300 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Sally McCarty
Commissioner
Department of Insurance

TITLE 844 MEDICAL LICENSING BOARD OF INDIANA

Proposed Rule
LSA Document #02-180

DIGEST

Amends 844 IAC 2.2-2-1, 844 IAC 2.2-2-2, and 844 IAC 2.2-2-5 concerning certification of physician assistants. Amends 844 IAC 2.2-2-8 concerning fees for registration of physician assistants. Effective 30 days after filing with the secretary of state.

844 IAC 2.2-2-1	844 IAC 2.2-2-5
844 IAC 2.2-2-2	844 IAC 2.2-2-8

SECTION 1. 844 IAC 2.2-2-1 IS AMENDED TO READ AS FOLLOWS:

844 IAC 2.2-2-1 Applications

Authority: IC 25-22.5-2-7; IC 25-27.5-3-5
Affected: IC 25-22.5-1-2; IC 25-27.5

Sec. 1. (a) The application for certification of a physician assistant must be made upon forms supplied by the committee.

(b) Each application for certification as a physician assistant or for a temporary permit while waiting for the next committee meeting shall include all of the following information:

(1) Complete names, address, and telephone number of the physician assistant.

(2) Satisfactory evidence of the following:

(A) Completion of an **approved** educational program. ~~approved by the committee.~~

(B) Passage of the Physician Assistant National Certifying Examination administered by the NCCPA.

(C) A current NCCPA certificate.

(3) All names used by the physician assistant, explaining the reason for such name change or use.

(4) Date and place of birth of the physician assistant, and age at the time of application.

(5) Citizenship and visa status if applicable.

(6) Whether the physician assistant has been licensed, certified, or registered in any other jurisdiction and, if so, the dates thereof.

(7) Whether the physician assistant has had any disciplinary action taken against the license, certificate, or registration by the licensing or regulatory agency of any other state or jurisdiction, and the details and dates thereof.

(8) A complete listing of all places of employment, including:

(A) the name and address of employers;

(B) the dates of each employment; and

(C) employment responsibilities held or performed; that the applicant has had since becoming a physician assistant in any state or jurisdiction.

(9) Whether the physician assistant is, or has been, addicted to, or is chemically dependent upon, any narcotic drugs, alcohol, or other drugs, and if so, the details thereof.

(10) Whether the applicant has been denied a license, certificate, approval, or registration as physician assistant by any other state or jurisdiction, and, if so, the details thereof, including the following:

(A) The name and location of the state or jurisdiction denying licensure.

(B) Certification, approval, or registration.

(C) The date of denial of the certification, approval, or registration.

(D) The reasons relating to the denial of certification, approval, or registration.

(11) Whether the physician assistant has been convicted of, or pleaded guilty to, any violation of federal, state, or local law relating the use, manufacturing, distributing, sale, dispensing, or possession of controlled substances or of drug addiction, and, if so, all of the details relating thereto.

(12) Whether the physician assistant has been convicted of, or pleaded guilty to, any federal or state criminal offense, felony, or misdemeanor, except for traffic violations that resulted only in fines, and, if so, all of the details thereto.

(13) Whether the physician assistant was denied privileges in

Proposed Rules

any hospital or health care facility, or had such privileges revoked, suspended, or subjected to any restriction, probation, or other type of discipline or limitation, and, if so, all of the details relating thereto, including the name and address of the hospital or health care facility, the date of such action, and the reasons therefore.

(14) Whether the physician assistant has ever been admonished, censured, reprimanded, or requested to withdraw, resign, or retire from any hospital or health care facility in which the physician assistant was employed, worked, or held privileges.

(15) Whether the physician assistant has had any malpractice judgments entered against him or her or settled any malpractice action or cause of action, and, if so, a complete, detailed description of the facts and circumstances relating thereto.

~~(16) A statement from the supervising physician that the physician assistant is, or will be, supervised by that physician.~~

~~(17) A description of the setting in which the physician assistant shall be working under the physician supervision.~~

~~(18) The name, business address, and telephone number of the physician under whose supervision the physician assistant will be supervised.~~

~~(19) (16)~~ One (1) passport-type photo taken of the applicant within the last eight (8) weeks.

(c) All information in the application shall be ~~typewritten, except the signature, and~~ submitted under oath or affirmation, subject to the penalties of perjury.

(d) Each applicant for certification as a physician assistant shall submit an executed authorization and release form supplied by the committee that:

(1) authorizes the committee or any of its authorized representatives to inspect, receive, and review;

(2) authorizes and directs any:

- (A) person;
- (B) corporation;
- (C) partnership;
- (D) association;
- (E) organization;
- (F) institute;
- (G) forum; or
- (H) officer thereof;

to furnish, provide, and supply to the committee all relevant documents, records, or other information pertaining to the applicant; and

(3) releases the committee, or any of its authorized representatives, and any:

- (A) person;
- (B) corporation;
- (C) partnership;
- (D) association;
- (E) organization;
- (F) institute;
- (G) forum; or
- (H) officer thereof;

from any and all liability regarding such inspection, review, receipt, furnishing, or supply of any such information.

(e) Application forms submitted to the committee must be complete in every detail. All supporting documents required by the application must be submitted with the application.

(f) Applicants for a temporary permit to practice as a physician assistant while waiting to take the examination or waiting for results of the examination must submit all requirements of subsection (b), except for subsection (b)(2)(B) and (b)(2)(C), in order to apply for a temporary permit.

(g) A temporary permit becomes invalid if the temporary permit holder fails to sit or fails to register for the next available examination. (*Medical Licensing Board of Indiana; 844 IAC 2.2-2-1; filed May 26, 2000, 8:52 a.m.: 23 IR 2498; errata filed Sep 21, 2000, 3:21 p.m.: 24 IR 382*)

SECTION 2. 844 IAC 2.2-2-2 IS AMENDED TO READ AS FOLLOWS:

844 IAC 2.2-2-2 Registration of supervising physician

Authority: IC 25-22.5-2-7; IC 25-27.5-3-5

Affected: IC 25-27.5-6

Sec. 2. (a) A physician ~~or osteopathic physician~~ licensed under IC 25-22.5 who intends to supervise a physician assistant shall register his or her intent to do so with the board on a form approved by the board prior to commencing supervision of a physician assistant. The supervising physician shall include the following information on the form supplied by the board:

(1) The name, business address, and telephone number of the supervising physician.

(2) The name, business address, telephone number, and certification number of the physician assistant.

(3) The current license number of the physician.

(4) A statement that the physician will be supervising no more than two (2) physician assistants, and the name and certificate numbers of the physician assistants he or she is currently supervising.

(5) A description of the setting in which the physician assistant will practice under the supervising physician, including the specialty, if any, of the supervising physician.

(6) A statement that the supervising physician:

(A) will exercise continuous supervision over the physician assistant in accordance with IC 25-27.5-6 and this article;

(B) shall review all patient encounters maintained by the physician assistant within twenty-four (24) hours after the physician assistant has seen a patient; and

(C) at all times, retain professional and legal responsibility for the care rendered by the physician assistant.

(7) Detailed description of the process maintained by the physician for evaluation of the physician assistant's performance.

(b) The supervising physician may not be the designated supervising physician for more than two (2) physician assistants and may not supervise more than two (2) physi-

cian assistants at one (1) time as the primary or designated supervising physician.

(c) The designated supervising physician is to accept responsibility of supervising the physician assistant in the absence of the primary supervising physician of record. Protocol is to be established by the physician practice.

~~(b)~~ (d) The supervising physician shall, within fifteen (15) days, notify the board when the supervising relationship with the physician assistant is terminated, and the reason for such termination. In addition, notification shall be submitted to the committee. (*Medical Licensing Board of Indiana; 844 IAC 2.2-2-2; filed May 26, 2000, 8:52 a.m.: 23 IR 2499; errata filed Sep 21, 2000, 3:21 p.m.: 24 IR 382*)

SECTION 3. 844 IAC 2.2-2-5 IS AMENDED TO READ AS FOLLOWS:

844 IAC 2.2-2-5 Privileges and duties

Authority: IC 25-22.5-2-7; IC 25-27.5-3-5

Affected: IC 25-22.5-1-2; IC 25-27.5

Sec. 5. (a) When engaged in the physician assistant's professional activities, a physician assistant shall wear a name tag identifying the individual as a physician assistant and shall inform patients that he or she is a physician assistant. A physician assistant shall not portray himself or herself as a licensed physician.

(b) A physician assistant shall ~~keep his or her certificate~~ **make** available for inspection at his or her primary place of business:

- (1) the physician assistant's certificate issued by the committee;
- (2) a statement from the supervising physician that the physician assistant is, or will be, supervised by that physician;
- (3) a description of the setting in which the physician assistant shall be working under the physician supervision;
- (4) a job description with duties to be performed by the physician assistant and to be signed by both the physician and physician assistant; and
- (5) the name, business address, and telephone number of the physician under whose supervision the physician assistant will be supervised.

(c) The physician assistant may perform, under the supervision of the supervising physician, such duties and responsibilities within the scope of the supervising physician's practice. (*Medical Licensing Board of Indiana; 844 IAC 2.2-2-5; filed May 26, 2000, 8:52 a.m.: 23 IR 2500*)

SECTION 4. 844 IAC 2.2-2-8 IS AMENDED TO READ AS FOLLOWS:

844 IAC 2.2-2-8 Certification of physician assistants; fees

Authority: IC 25-22.5-2-7; IC 25-27.5-3-5

Affected: IC 25-22.5-1-1.1; IC 25-22.5-1-2; IC 25-27.5

Sec. 8. (a) A nonrefundable fee of ~~thirty one hundred~~ **thirty one hundred** dollars (~~\$30~~) (**\$100**) shall accompany the initial application for ~~registration~~ **certification**.

(b) A nonrefundable fee of ~~twenty fifty~~ **twenty five** dollars (~~\$20~~) (**\$50**) shall accompany an application for changing supervising physicians.

(c) A fee of ~~twenty fifty~~ **twenty five** dollars (~~\$20~~) (**\$50**) shall accompany each ~~biannual~~ **biennial** application for renewal of the physician assistant certificate. **A fee of fifty dollars (\$50) shall accompany each request for a temporary permit in addition to the fee for initial certification.**

(d) A fee of ten dollars (\$10) shall accompany each request for verification of licensure to another state.

(e) All such fees are nonrefundable. (*Medical Licensing Board of Indiana; 844 IAC 2.2-2-8; filed May 26, 2000, 8:52 a.m.: 23 IR 2501*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 24, 2002 at 9:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Medical Licensing Board of Indiana will hold a public hearing on proposed amendments concerning certification of physician assistants and fees for certification of physician assistants. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W041 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Lisa R. Hayes
Executive Director
Health Professions Bureau

**TITLE 876 INDIANA REAL ESTATE
COMMISSION**

Proposed Rule

LSA Document #01-369

DIGEST

Amends 876 IAC 4-2-2 to modify the curricula for salesperson under IC 25-34.1-9-11(a)(1). Amends 876 IAC 4-2-3 to modify the curricula for broker under IC 25-34.1-9-11(a)(1). Amends 876 IAC 4-2-9 to require licensees to obtain six hours of continuing education to reactivate an inactive license during a two year licensure period and to require a licensee who has

Proposed Rules

reactivated their license to obtain 10 hours of continuing education in order to renew the license at the end of the two year licensure period. Effective 30 days after filing with the secretary of state.

876 IAC 4-2-2

876 IAC 4-2-3

876 IAC 4-2-9

SECTION 1. 876 IAC 4-2-2 IS AMENDED TO READ AS FOLLOWS:

876 IAC 4-2-2 Curricula for salespersons under IC 25-34.1-9-11(a)(1)

Authority: IC 25-34.1-9-21

Affected: IC 25-34.1-9-11

Sec. 2. (a) This section establishes the six (6) hour continuing education requirement under ~~IC 25-34.1-9-11(1)~~ **IC 25-34.1-9-11(a)(1)** for salespersons.

(b) To qualify for license renewal, salespersons must have two (2) hours of continuing education **instruction** in ~~each of~~ **any** three (3) of the following:

- (1) **Indiana** licensure and escrow law.
- (2) **Indiana** agency law.
- (3) **Fair housing and** civil rights law.
- (4) Listing contracts and purchase agreements.
- (5) Settlement procedures.
- (6) Antitrust.
- (7) **Environmental issues.**
- (8) **Ethics and standards.**

(Indiana Real Estate Commission; 876 IAC 4-2-2; filed Dec 1, 1993, 10:30 a.m.: 17 IR 768; filed Jun 21, 1996, 10:00 a.m.: 19 IR 3112; readopted filed Jun 29, 2001, 9:56 a.m.: 24 IR 3824)

SECTION 2. 876 IAC 4-2-3 IS AMENDED TO READ AS FOLLOWS:

876 IAC 4-2-3 Curricula for brokers under IC 25-34.1-9-11(a)(1)

Authority: IC 25-34.1-9-21

Affected: IC 25-34.1-9-11

Sec. 3. (a) This section establishes the six (6) hour continuing education requirement under ~~IC 25-34.1-9-11(1)~~ **IC 25-34.1-9-11(a)(1)** for brokers.

(b) To qualify for license renewal, brokers must have two (2) hours of **continuing education instruction** in ~~each of any~~ three (3) of the following:

- (1) **Indiana** licensure and escrow law.
- (2) **Indiana** agency law.
- (3) **Fair housing and** civil rights law.
- (4) Listing contracts and purchase agreements.
- (5) Settlement procedures.
- (6) Antitrust.
- (7) **Environmental issues.**
- (8) **Ethics and standards.**

(Indiana Real Estate Commission; 876 IAC 4-2-3; filed Dec 1, 1993, 10:30 a.m.: 17 IR 768; filed Jun 21, 1996, 10:00 a.m.: 19 IR 3112, eff Jan 1, 1997; readopted filed Jun 29, 2001, 9:56 a.m.: 24 IR 3824)

SECTION 3. 876 IAC 4-2-9, AS AMENDED AT 25 IR 104, SECTION 10, IS AMENDED TO READ AS FOLLOWS:

876 IAC 4-2-9 License activation

Authority: IC 25-34.1-9-21

Affected: IC 25-34.1-9-11

Sec. 9. (a) In order to reactivate an inactive license at the time of license renewal, the licensee must have obtained all sixteen (16) hours of continuing education which would have been required for renewal had the license been active.

(b) In order to reactivate an inactive license during a two (2) year licensure period, the licensee must obtain the ~~sixteen (16)~~ **six (6)** hours of continuing education required by ~~IC 25-34.1-9-11(1)~~ **and IC 25-34.1-9-11(2) IC 25-34.1-9-11(a)(1)** for that two (2) year licensure period and pay a ten dollar (\$10) fee.

(c) **A licensee who has reactivated the licensee's license during a two (2) year licensure period under subsection (b) must obtain the ten (10) hours of continuing education required by IC 25-34.1-9-11(a)(2) in order to renew the license at the end of the two (2) year licensure period.** *(Indiana Real Estate Commission; 876 IAC 4-2-9; filed Dec 1, 1993, 10:30 a.m.: 17 IR 769; readopted filed Jun 29, 2001, 9:56 a.m.: 24 IR 3824; filed Aug 15, 2001, 9:05 a.m.: 25 IR 104)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 24, 2002 at 10:40 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 2, Indianapolis, Indiana the Indiana Real Estate Commission will hold a public hearing on proposed amendments to require licensees to obtain six hours of continuing education to reactivate an inactive license during a two year licensure period, to require a licensee who has reactivated their license to obtain 10 hours of continuing education in order to renew the license at the end of the two year licensure period, to modify the curricula for salespersons under IC 25-34.1-9-11(a)(1), and to modify the curricula for brokers under IC 25-34.1-9-11(a)(1). Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E012 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Gerald H. Quigley
Executive Director
Indiana Professional Licensing Agency